No. .....

IN THE

Supreme Court of the United States

October Term, 1980

DAMES & MOORE, a partnership,

Petitioner,

vs.

DONALD T. REGAN, THE SECRETARY OF THE TREASURY OF THE UNITED STATES OF AMERICA, and THE UNITED STATES OF AMERICA,

Respondents.

APPENDIX TO PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT BEFORE JUDGMENT.

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No. .....

IN THE

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DAMES & MOORE, a partnership,

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vs.

DONALD T. REGAN, THE SECRETARY OF THE TREASURY OF THE UNITED STATES OF AMERICA, and THE UNITED STATES OF AMERICA,

Respondents.

APPENDIX TO PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT BEFORE JUDGMENT.

COMPLAINT FOR INJUNCTIVE AND DECLARATORY RELIEF.

United States District Court, Central District of California.

Dames & Moore, a partnership, Plaintiff, v. Donald T. Regan, The Secretary of The Treasury of the United States of America, and The United States of America, Defendants. Civil Action No. 81 2064.

Filed: April 28, 1981.

Plaintiff Dames & Moore ("Plaintiff") hereby files pursuant to Rule 69 of the Federal Rules of Civil Procedure this complaint in aid of judgment and alleges as follows:

PARTIES

1. Plaintiff is a partnership with its principal place of business in Los Angeles, California.

2. Donald T. Regan is the Secretary of the Treasury of the United States (the "Secretary") and is sued in his official capacity. The Secretary may be served with process herein pursuant to Rule 4(d)(5) of the Federal Rules of Civil Procedure and 28 U.S.C. § 1391(e).

3. The United States of America (the "United States") is the Government established by the Constitution of the United States of America. It may be served with process herein pursuant to Rule 4(d)(4) of the Federal Rules of Civil Procedure.

JURISDICTION AND VENUE

4. This Court has jurisdiction of this proceeding in aid of judgment (a) under 28 U.S.C. § 1331, in that the amount in controversy herein exceeds $10,000, exclusive of interest and costs, and this action arises under the Constitution, laws or treaties of the United States; (b) under 28 U.S.C. § 1651; (c) under 28 U.S.C. §§ 2201 et seq.; (d) pursuant to Rule 69 of the Federal Rules of Civil Procedure.

5. Venue of this proceeding in aid of judgment is in this District pursuant to 28 U.S.C. § 1391(e)(1).

FACTUAL ALLEGATIONS

6. This court, on February 18, 1981, entered a Final Judgment in action CV 79-04918 LEW (Px), *Dames & Moore v. Atomic Energy Organization of Iran, et al.* (hereinafter the "Underlying Action"), in favor of Plaintiff and against Defendants The Government of Iran and The Atomic Energy Organization of Iran in the sum of $3,788,930.79, plus interest. A copy of said Final Judgment is attached hereto as Exhibit A and incorporated herein. Although an

appeal from that judgment has been taken, which appeal is presently pending before the United States Court of Appeals for the Ninth Circuit as No. 81-5237, Defendants have sought neither a stay of execution nor posted a bond of supersedeas.

7. Plaintiff has not yet obtained judgments against certain Iranian bank defendants in the Underlying Action. Plaintiff's Underlying Action is pending before this Court against these certain Iranian bank defendants.

8. On or about December 20, 1979, January 4, 1980, February 4, 1980 and May 12, 1980, this Court in the Underlying Action granted orders for the issuance of, and regarding writs of attachment against property of defendants in the Underlying Action. Said Writs of attachments have been served on a number of banks and other individuals and corporations (hereinafter "Garnishees"), which have acknowledged that they hold deposit accounts or other assets in the name of defendants in Plaintiff's Underlying Action. Pursuant to Rule 64 of the Federal Rules of Civil Procedure and California Code of Civil Procedure Sections 481-010 *et seq.*, property of defendants in the Underlying Action held by the Garnishees is attached as security for Dames & Moore so that Dames & Moore may levy against said property to satisfy its judgment. In at least one instance, property is held in *custodia legis*, pursuant to this Court's Order of May 12, 1980 in the Underlyng Action.

9. On or about March 2, 1980 and March 3, 1980, Plaintiff sought writs of garnishment in the State of Washington to commence execution proceedings to satisfy its judgment in the Underlying Action. On March 2, 1981 the Superior Court of the State Washington for Snohomish County issued a writ of garnishment in favor of Plaintiff. A copy of said writ is incorporated and attached hereto as Exhibit B. On or about March 5, 1981, the Superior Court

of the State of Washington for Clark County issued a writ of execution and a notice of sale. A copy of said writ and notice is incorporated and attached hereto as Exhibit C.

10. On or about January 19, 1981, representatives of the United States reached a purported agreement with The Government of Iran involving release of the American hostages (the "Agreement"). The Agreement, in the form of two Declarations of the Government of the Democratic and Popular Government of Algeria, undertakes to "restore the financial position of Iran insofar as possible to that which existed prior to November 14, 1979." One of these Declarations states, *inter alia*:

> It is the purpose of both parties . . . to terminate all litigation as between the Government of each party and the nationals of the other, and to bring about the settlement and termination of all such claims through binding arbitration. Through the procedures provided in the Declaration, relating to the Claims Settlement Agreement, the United States agrees to terminate all legal proceedings in the United States courts involving claims of United States persons and institutions against Iran and its state enterprises, to nullify all attachments and judgments obtained therein, to prohibit all further litigation based on such claims, and to bring about the termination of such claims through binding arbitration.

11. Under the Agreement, the United States further has agreed to bring about, within six months, the transfer to the Central Bank of Algeria of all "Iranian deposits" in United States banks. Such Agreement was entered into pursuant to the authorization of Jimmy Carter, President of the United States of America (the "President"). Said Agreement was not specifically authorized by the Congress of the United States of America and has not been approved or ratified by the Congress of the United States of America or the United

States Senate. A copy of said Agreement, and a related Declaration is attached hereto as Exhibit D and incorporated herein.

12. The Agreement also provides, *inter alia*, in a Declaration Concerning Claims Settlement, that: "claims arising under a binding contract between the parties specifically providing that any dispute thereunder shall be within the sole jurisdiction of the competent Iranian courts in response to the Maglis position."

13. The Contract between Dames & Moore and the AEOI, on which the Underlying Action is based, provides:

> Any dispute or disagreement arising under this Contract shall first be discussed amicably by both parties. Failing agreement, such dispute or disagreement shall be submitted to conciliation. Each party shall have the right to appoint one conciliator and a third conciliator shall be appointed by the Plan and the Budget Organization of the Government of Iran. In the event that either party is unwilling to accept the decision of the conciliation board, the matter shall be decided finally by resort to the courts of Iran.

14. On or about January 19, 1981, the President signed several Executive Orders purporting to implement the Agreement. These Executive Orders purport to be based on the President's authority under the "Constitution and statutes and including Section 203 of the International Emergency Economic Powers Act (50 U.S.C. § 1702), Section 301 of Title 3 of the United States Code, Section 1732 of Title 22 of the United States Code and Section 301 of the National Emergencies Act (50 U.S.C. § 1631)."

15. In such Executive Orders, the President decreed that all United States banking institutions in the possession of funds "legally or beneficially owned by the Government of Iran" are

> licensed, authorized, directed, and compelled to transfer such funds . . . to the Federal Reserve Bank of New York to be held or transferred as directed by the Secretary of the Treasury.

The President further decreed as follows:

> All persons subject to the jurisdiction of the United States are prohibited from acquiring or exercising any right, power or privilege whether by Court Order or otherwise with respect to (Iran's assets in United States banks).

16. Under such Executive Orders, the President also ordered that all persons holding nonfund Iranian assets are to transfer those assets to Iran as directed by Iran, and all court orders, liens, and attachments relating to such property are nullified.

17. Under such Executive Orders, the President has delegated and authorized the Secretary to exercise the President's functions under the International Economic Emergency Powers Act to carry out the purposes of such Executive Orders. A copy of these Executive Orders (Executive Order Nos. 12277-12281) is attached hereto as Exhibit E and incorporated herein.

18. On February 24, 1981, President Reagan issued Executive Order 12,294 purporting to ''suspend'' all Iranian litigation which may ''arguably'' be presented to the Claims Tribunal established by Executive Agreement under the Algerian Declarations. (A copy of Executive Order 12,294 is attached hereto as Exhibit F and incorporated herein.)

19. On February 24, 1981, the Department of Treasury issued regulations implementing the Executive Orders of Presidents Carter and Reagan. (A copy of those Regulations is attached hereto as Exhibit G and incorporated herein.)

20. Under the purported authority of the Agreement and the Executive Orders, and the actions of the President and

the Secretary to enforce and implement them, actions may be taken to directly interfere with the property attached to secure satisfaction of this Court's Final Judgment, to directly interfere with Plaintiff's execution proceedings and the property which Plaintiff seeks to execute upon, to nullify the rights of Plaintiff to enforce its legal rights under such Final Judgment and threaten the jurisdiction of this Court and its right and duty to effectuate its Final Judgment and to continue to adjudicate the Underlying Action between Plaintiff and those defendants against which no judgment has been obtained.

FIRST CAUSE OF ACTION.

21. Plaintiff realleges and incorporates herein for all purposes Paragraphs 1 through 20 of this Complaint.

22. If construed to apply to Plaintiff, the execution, issuance, and enforcement of the Agreement and Executive Orders by President and the Secretary, purportedly acting on behalf of the United States, are in direct violation of the Constitution of the United States of America to the extent that they purport to nullify the Orders and Judgments of the Judicial Branch of Government, to interfere with property *in custodia legis* thereunder, and/or to prohibit Plaintiff from exercising its rights under Orders and Judgments of United States courts and state courts with respect to such property. Such actions violate Article III of the Constitution, Article II, Section 2 of the Constitution, the Constitutional principle of separation of powers, the rights of Plaintiff to due process of law and access to the courts under the First and Fifth Amendments to the Constitution, and the inherent powers and rights of the United States courts.

23. The execution, issuance, and enforcement of the Agreement and Execution Orders are beyond the powers of the President and the Secretary, purportedly acting on behalf

of the United States, to the extent that they purport to nullify the Orders and Judgments of the United States Courts, and/or interfere with property *in custodia legis* and/or prohibit Plaintiff from exercising its rights under Orders and Judgments of United States Courts and state courts with respect to such property and/or deny Plaintiff its right to pursue its action against certain Bank Defendants in the underlying action. Neither the Constitution nor the statutes of the United States, including those set forth in the Executive Orders, authorizes the nullification of Final Judgments, attachments or other orders of United States courts, the interference with property in the custody of such courts, or the prohibition of citizens from enforcing their legal rights.

24. Assuming arguendo that the execution, issuance, and enforcement of the Agreement and Executive Orders by the President and the Secretary, purportedly acting on behalf of the United States, were authorized by one or more statutes of the United States, then such statutes would be unconstitutional on their face and/or as applied to Plaintiff for the reasons set forth above.

25. The Agreement and such Executive Orders and the impending enforcement and execution of them by the Secretary, acting purportedly on behalf of the United States, will cause irreparable injury, loss, or damage to Plaintiff, for which there is no adequate remedy at law. A preliminary injunction to restrain actions by the Secretary and the United States which purport to nullify, interfere with, or abrogate this court's Final Judgment or its effectuation thereof and with Plaintiff's right to enforce its legal rights in United States or state courts, is essential to preserve the status quo while this court determines the legality of the actions set forth above, and to prevent irreparable injury, loss, or damage to Plaintiff for which there is no adequate remedy at law. Such a preliminary injunction is also necessary to pre-

vent a direct and serious deprivation of the constitutional and civil rights of Plaintiff, and to preserve the jurisdiction of this Court. Finally, such a preliminary injunction is necessary to aid Plaintiff in reaching property owned by Defendants The Government of Iran and the AEOI.

26. Upon final hearing hereof, Plaintiff is entitled to permanent injunctive relief to restrain the Secretary and the United States as set forth above.

SECOND CAUSE OF ACTION

27. Plaintiff realleges and incorporates herein for all purposes Paragraphs 1 through 21 of this Complaint.

28 Plaintiff is further entitled under 28 U.S.C. § 2201 to a declaratory judgment that, to the extent the Agreement, the Executive Order, and all other acts taken pursuant to or in the enforcement of either purport to authorize any nullification, interference with, or abrogation of Plaintiff's Final Judgment, its attachment of property to secure satisfaction of said Final Judgment, or with Plaintiff's right to enforce its legal rights in the United States courts, or with Plaintiff's execution proceedings in the State of Washington, or to terminate any further litigation against The Government of Iran, its agencies or instrumentalities, or otherwise interfere with the jurisdiction of the United States courts, or state courts enforcing the judgment of this Court, the Agreement, the Executive Order, and all other acts taken pursuant to or in the enforcement of either are contrary to the Constitution of the United States of America, beyond the statutory powers of the President and the Secretary acting on behalf of the United States, and/or that any statutes authorizing such acts are unconstitutional on their face and/or as applied, and are therefore null, void, and of no force and effect.

WHEREFORE, Plaintiff Dames & Moore prays that the Court grant the following relief:

1. That the Court issue a preliminary injunction restraining defendants during the pendency of this proceeding from taking any action to nullify, interfere with, or abrogate:

(a) The final judgment entered by this Court on February 18, 1981, in *Dames & Moore v. Atomic Energy Organization of Iran, et al.* (CV 79-04918 LEW (Px)); and/or

(b) Plaintiff's attempts to execute on that final judgment, including, but not limited to those which have commenced in the State of Washington; and/or

(c) Plaintiff's prejudgment attachments against property of defendants in *Dames & Moore v. Atomic Energy Organization of Iran, et al.* (CV 79-04918 LEW (Px)); and/or

(d) Plaintiff's right to continue to enforce and prosecute its claims against those defendants against those defendants against which no judgment has been obtained in *Dames & Moore v. Atomic Energy Organization of Iran, et al.* (CV 79-04918 LEW (Px)).

2. That upon final hearing hereof, the Court issue permanent injunctive relief restraining defendants during the pendency of this proceeding from taking any action to nullify, interfere with, or abrogate:

(a) The final judgment entered by this Court on February 18, 1981, in *Dames & Moore v. Atomic Energy Organization of Iran, et al.* (CV 79-04918 LEW (Px)); and/or

(b) Plaintiff's attempts to execute on that final judgment, including, but not limited to those which have commenced in the State of Washington; and/or

(c) Plaintiff's prejudgment attachments against property of defendants in *Dames & Moore v. Atomic Energy Organization of Iran, et al.* (CV 79-04918

LEW (Px)); and/or

(d) Plaintiff's right to continue to enforce and prosecute its claims against those defendants against those defendants against which no judgment has been obtained in *Dames & Moore v. Atomic Energy Organization of Iran et al.*, (CV 79-04918 LEW (Px)).

3. That upon final hearing hereof, the Court issue a declaratory judgment that to the extent the Agreement, the Executive Order, and all other acts taken pursuant to or in the enforcement of either purport to authorize any nullification, interference with, or abrogation of Plaintiff's Final Judgment, its attachment of property to secure satisfaction of said Final Judgment, or with Plaintiff's right to enforce its legal rights in the United States courts, or with Plaintiff's execution proceedings in the State of Washington, or to terminate any further litigation against The Government of Iran, its agencies or instrumentalities, or otherwise interfere with the jurisdiction of the United States courts, or state courts enforcing the judgment of this Court, the Agreement, the Executive Order, and all other acts taken pursuant to or in the enforcement of either are contrary to the Constitution of the United States of America, beyond the statutory powers of the President and the Secretary acting on behalf of the United States, and/or that any statutes authorizing such acts are unconstitutional on their face and/or as applied, and are therefore null, void, and of no force and effect.

4. For attorneys' fees, costs, and such other and further relief to which Plaintiff may be entitled.

Dated: April 27, 1981.

Respectfully submitted,

TUTTLE & TAYLOR Incorporated
MERLIN W. CALL
C. STEPHEN HOWARD
WILLIAM C. SCHWEINFURTH
JEFFREY M. HAMERLING

/s/ JEFFREY M. HAMERLING
Jeffrey M. Hamerling, a member of
the law firm of TUTTLE & TAYLOR
Incorporated, Attorneys for
Plaintiff

EXHIBIT A.

Judgment Against Defendants Atomic Energy Organization of Iran and State and Government of Iran, Date: February 17, 1981, Time: 9:00 A.M.

United States District Court, Central District of California.

Dames & Moore, a partnership, Plaintiff, v. Atomic Energy Organization of Iran, State and Government of Iran, Bank Melli Iran, Industrial Credit Bank, Industrial and Mining Development Bank of Iran, International Bank of Iran, Agricultural Development Bank of Iran, Bank Markazi Iran, Bank of Tehran, Agricultural Cooperative Bank of Iran, Bank Bazargani Iran, Bank Bimeh Iran, Bank Iranshahr, Bank Dariush, Bank Kar, The Bank of Iran and the Middle East, Bank of Omran, Bank Pars, Bank Rafah Kargaran, Bank Saderat Iran, Bank Sakhteman, Bank Sanaye Iran, Bank Sepah, Bank Shahryar, Banque Etebarate Iran, Development and Investment Bank of Iran, Distributors Cooperative Credit Bank, the Foreign Trade Bank of Iran, Defendants. No. CV 79-04918 LEW (Px).

Filed and Entered: Feb. 18, 1981.

The Motion of Plaintiff Dames & Moore (''Plaintiff'') for Summary Judgment against Defendants Atomic Energy Organization of Iran (''AEOI'') and State and Government of Iran having come on for hearing on Tuesday, February 17, 1981, at 9:00 A.M. and the Court having considered the papers filed by the parties and having heard the arguments of counsel; and the Court having made findings of fact and conclusions of law, and good cause appearing;

IT IS HEREBY ORDERED that the Motion of Plaintiff for Summary Judgment against Defendants AEOI and Iran is granted; and

IT IS FURTHER ADJUDGED, ORDERED, and DECREED that:

1. Plaintiff shall have judgment against defendants AEOI and the State and Government of Iran (or any other name by which the State and Government of Iran refers to itself, including, but not limited to the Islamic Republic of Iran) in the amount of $3,788,930.79 (which amount includes interest to January 31, 1981 at the contract rate of six percent in the amount of $351,377.77) plus interest after January 31, 1981 at the contract rate of six percent in the amount of $565.07 per day.

2. There is no just reason for delay in entering final judgment and therefore, the Court expressly directs that final judgment be entered pursuant to Rule 54(b) of the Federal Rules of Civil Procedure.

Dated: February 18, 1981

/s/ Laughlin E. Waters
Laughlin E. Waters
United States District Judge

Presented By:

TUTTLE & TAYLOR Incorporated
MERLIN W. CALL
C. STEPHEN HOWARD
WILLIAM C. SCHWEINFURTH
JEFFREY M. HAMERLING

/s/ C. Stephen Howard
C. Stephen Howard, a member of
the law firm of Tuttle & Taylor
Incorporated, Attorneys for

[Notarized]

EXHIBIT B.

Writ of Garnishment.

Superior Court of Washington for Snohomish County.

Dames & Moore, a partnership, Plaintiff, v. Atomic Energy Organization of Iran, State and Government of Iran, et al., Defendants, and The Boeing Company and Boeing Domestic Sales Corporation, Garnishee. Cause No. 81-2-00665-3.

The State of Washington to: The Boeing Company and The Boeing Domestic Sales Corporation, Garnishee, and to: Atomic Energy Organization of Iran and State and Government of Iran, Defendants.

The above-named plaintiff claims that the above-named defendants are indebted to plaintiff and that the amount of $4,185,341.04 should be held to satisfy that indebtedness and has applied for a writ garnishment against you.

YOU ARE HEREBY COMMANDED to answer this writ by filling in the attached form according to the instructions thereon, and you must mail or deliver the original of such answer to the court, one copy to the plaintiff or its attorney and one copy to the defendants within 20 days after the service of the writ upon you.

Unless directed by the court, do not pay any debt, whether wages subject to this garnishment or any other debt, owed the defendants when this writ was served, or deliver, sell or transfer, or recognize any sale or transfer of, any personal property or effects of the defendants in your possession or control when this writ was served; any such payment, delivery, sale or transfer is void as to so much of the debt, property or shares as are necessary to satisfy plaintiff's claim and costs for this writ with interest.

In the event that you owe to defendants a debt payable in money and subject to this garnishment in excess of the

amount set forth in the first paragraph of this garnishment, hold only the amount set forth in said first paragraph of this garnishment and release all additional funds or property defendants.

WHETHER OR NOT YOU OWE ANYTHING TO DEFENDANTS, YOUR FAILURE TO ANSWER AS REQUIRED MAY MAKE YOU LIABLE FOR DEFENDANTS' CLAIMED DEBT TO PLAINTIFF.

WITNESS, the Honorable Robert C. Bibb, Judge of the Superior Court and the seal thereof, this 2nd day of March, 1981.

KAY D. ANDERSON
Clerk of the Superior Court
/s/ By Denise Foster

Wickwire, Lewis, Goldmark
& Schorr

/s/ Peggy Williams
Kevin F. Kelly
Peggy J. Williams
Attorneys for Plaintiff

EXHIBIT C.
Writ of Execution.

Superior Court of Washington for Clark County.

Dames & Moore, partnership, Plaintiff vs. Atomic Energy Organization of Iran, State and Government of Iran, et al., Defendants No,. 81-00290-4.

The State of Washington To the Sheriff of Clark County:

Whereas, Dames & Moore, a partnership, plaintiff, Recovered Judgment against the State and Government of Iran, and Atomic Energy Organization of Iran, defendants in the Superior Court of Clark County State of Washington, on the 19th day of February A.D. 1981 for the sum of $3,788,930.79 Dollars, with interest at the rate of 6 percent per annum from Jan. 31, 1981, cost of suit, taxed at $....., and an attorney's fee of $....., with interest on attorney's fee and costs to the rate of ... percent per annum from .....

THEREFORE, in the name of the State of Washington, you are hereby commanded forthwith to levy upon, seize and take into execution, the personal property of the said State and Government of Iran, and Atomic Energy Organization of Iran, in your County, sufficient to execution and to satisfy said judgment, interest and increased interest, costs and increased costs, and make sale thereof according to law; and if sufficient personal property cannot be found, then your are further commanded to make the amount of said judgment, interest and increased interest, costs and increased costs, out of all property tangible or intangible, including interests in property held by defendants and/or debts owing to defendants and/or property held for the benefit of or subject to the control of defendants not exempt by law, and make return of writ within sixty days from the date hereof.

WITNESS, The Hon. Presiding Judge of said Superior Court, and the seal of the said court this 5th day of March 1981.

Kevin F. Kelly, Peggy J. Williams
Wickwire, Lewis, Goldmark & Schorr
500 Maynard Building
Seattle, Washington 98104
Attorneys for plaintiff Dames & Moore
By /s/ [illegible]
Superior Court Clerk.
Deputy Clerk.

NOTICE

Sheriff's Sale of Personal Property

State of Washington, County of Clark, ss. Dames Moore, a partnership.

BY VIRTUE OF AN EXECUTION Atomic Energy Organization of Iran, State and Government of Iran, State and Government of Iran, et al., issued out of the Superior Court of the State of Washington for the County of Clark, and to me directed and delivered, for a judgment rendered in said Court on the 19th day of February A.D., 1981, in favor of DAMES & MOORE, a partnership Plaintiff, and against Atomic Energy Organization of Iran, State and Government of Iran, Defendants, and for the sum of $3,788,930.79 with interest at the rate of 6% per cent, per annum from said 31st day of January A.D., 1981, and for the further sum of $. . . . . attorney's fees, and $. . . . . cost of suit, I have levied upon Writ of Execution issued on March 5th, 1981 the following described personal property, to-wit:

> All property of the State and Government of Iran, including any property held in the name of its Ministry of Roads and Transportation, stored at the Port of Vancouver. This property includes, but is not limited to, portable modular housing units, together with all furnishings, fixtures and other items accompanying such units, construction equipment, and rock crushing equipment, in which the State and Government of Iran has an interest.

Notice is Hereby Given, That on the day of To be set A.D., 1981, at the hour of 2:00 o'clock P.M. of said day at 3103 Lower River Rd., Vancouver, Washington in the said County of Clark, I will sell all the right, title and interest of the said Atomic Energy Organization of Iran, State and Government of Iran, Defendants in and to the above described personal property at public auction, to the highest

and best bidder for cash, to satisfy said Dames & Moore, a Partnership and all costs.

Given under my hand this 5th day of March 1981.

FRANK KANEKOA, Sheriff
/s/ By Robert L. Songer, Deputy
ROBERT L. SONGER
Ct Civil Deputy

EXHIBIT D.

Declaration of the Government of the Democratic and Popular Republic of Algeria.

The Government of the Democratic and Popular Republic of Algeria, having been requested by the Governments of the Islamic Republic of Iran and the United States of America to serve as an intermediary in seeking a mutually acceptable resolution of the crisis in their relations arising out of the detention of the 52 United States nationals in Iran, has consulted extensively with the two governments as to the commitments which each is willing to make in order to resolve the crisis within the framework of the four points stated in the resolution of November 2, 1980, of the Islamic Consultative Assembly of Iran. On the basis of formal adherences received from Iran and the United States, the Government of Algeria now declares that the following interdependent commitments have been made by the two governments:

GENERAL PRINCIPLES

The undertakings reflected in this Declaration are based on the following general principles:

A. Within the framework of and pursuant to the provisions of the two Declarations of the Government of the Democratic and Popular Republic of Algeria, the United States will restore the financial position of Iran, in so far as possible, to that which existed prior to November 14, 1979. In this context, the United States commits itself to ensure the mobility and free transfer of all Iranian assets within its jurisdiction, as set forth in Paragraphs 4-9.

B. It is the purpose of both parties, within the framework of and pursuant to the provisions of the two Declarations of the Government of the Democratic and Popular

Republic of Algeria, to terminate all litigation as between the Government of each party and the nationals of the other, and to bring about the settlement and termination of all such claims through binding arbitration. Through the procedures provided in the Declaration, relating to the Claims Settlement Agreement, the United States agrees to terminate all legal proceedings in United States courts involving claims of United States persons and institutions against Iran and its state enterprises, to nullify all attachments and judgments obtained therein, to prohibit all further litigation based on such claims, and to bring about the termination of such claims through binding arbitration.

Point I: Non-Intervention in Iranian Affairs

1. The United States pledges that it is and from now on will be the policy of the United States not to intervene, directly or indirectly, politically or militarily, in Iran's internal affairs.

Points II and III: Return of Iranian Assets and Settlement of U.S. Claims

2. Iran and the United States (hereinafter ''the parties'') will immediately select a mutually agreeable central bank (hereinafter ''the Central Bank'') to act, under the instructions of the Government of Algeria and the Central Bank of Algeria (hereinafter ''The Algerian Central Bank'') as depositary of the escrow and security funds hereinafter prescribed and will promptly enter into depositary arrangements with the Central Bank in accordance with the terms of this declaration. All funds placed in escrow with the Central Bank pursuant to this declaration shall be held in an account in the name of the Algerian Central Bank. Certain procedures for implementing the obligations set forth in this Declaration and in the Declaration of the Democratic and Popular Republic of Algeria concerning the settlement of claims

by the Government of the United States and the Government of the Islamic Republic of Iran (hereinafter ''the Claims Settlement Agreement'') are separately set forth in certain Undertakings of the Government of the United States of America and the Government of the Islamic Republic of Iran with respect to the Declaration of the Democratic and Popular Republic of Algeria.

3. The depositary arrangements shall provide that, in the event that the Government of Algeria certifies to the Algerian Central Bank that the 52 U.S. nationals have safely departed from Iran, the Algerian Central Bank will thereupon instruct the Central Bank to transfer immediately all monies or other assets in escrow with the Central Bank pursuant to this declaration, provided that at any time prior to the making of such certification by the Government of Algeria, each of the two parties, Iran and the United States, shall have the right on seventy-two hours notice to terminate its commitments under this declaration.

If such notice is given by the United States and the foregoing certification is made by the Government of Algeria within the seventy-two hour period of notice, the Algerian Central Bank will thereupon instruct the Central Bank to transfer such monies and assets. If the seventy-two hour period of notice by the United States expires without such a certification having been made, or if the notice of termination is delivered by Iran, the Algerian Central Bank will thereupon instruct the Central Bank to return all such monies and assets to the United States, and thereafter the commitments reflected in this declaration shall be of no further force and effect.

ASSETS IN THE FEDERAL RESERVE BANK

4. Commencing upon completion of the requisite escrow arrangements with the Central Bank, the United States

will bring about the transfer to the Central Bank of all gold bullion which is owned by Iran and which is in the custody of the Federal Reserve Bank of New York, together with all other Iranian assets (or the cash equivalent thereof) in the custody of the Federal Reserve Bank of New York, to be held by the Central Bank in escrow until such time as their transfer or return is required by Paragraph 3 above.

ASSETS IN FOREIGN BRANCHES OF U.S. BANKS

5. Commencing upon the completion of the requisite escrow arrangements with the Central Bank, the United States will bring about the transfer to the Central Bank, to the account of the Algerian Central Bank, of all Iranian deposits and securities which on or after November 14, 1979, stood upon the books of overseas banking offices of U.S. banks, together with interest thereon through December 31, 1980, to be held by the Central Bank, to the account of the Algerian Central Bank, in escrow until such time as their transfer or return is required in accordance with Paragraph 3 of this Declaration.

ASSETS IN U.S. BRANCHES OF U.S. BANKS

6. Commencing with the adherence by Iran and the United States to this declaration and the claims settlement agreement attached hereto, and following the conclusion of arrangements with the Central Bank for the establishment of the interest-bearing security account specified in that agreement and Paragraph 7 below, which arrangements will be concluded within 30 days from the date of this Declaration, the United States will act to bring about the transfer to the Central Bank, within six months from such date, of all Iranian deposits and securities in U.S. banking institutions in the United States, together with interest thereon, to be held by the Central Bank in escrow until such time as their transfer or return is required by Paragraph 3.

7. As funds are received by the Central Bank pursuant to Paragraph 6 above, the Algerian Central Bank shall direct the Central Bank to (1) transfer one-half of each such receipt to Iran and (2) place the other half in a special interest-bearing security account in the Central Bank, until the balance in the security account has reached the level of $1 billion. After the $1 billion balance has been achieved, the Algerian Central Bank shall direct all funds received pursuant to Paragraph 6 to be transferred to Iran. All funds in the security account are to be used for the sole purpose of securing payment of, and paying, claims against Iran in accordance with the claims settlement agreement. Whenever the Central Bank shall thereafter notify Iran that the balance in the security account has fallen below $500 million, Iran shall promptly make new deposits sufficient to maintain a minimum balance of $500 million in the account. The account shall be maintained until the President of the Arbitral Tribunal established pursuant to the claims settlement agreement has certified to the Central Bank of Algeria that all arbitral awards against Iran have been satisfied in accordance with the claims settlement agreement, at which point any amount remaining in the security account shall be transferred to Iran.

OTHER ASSETS IN THE U.S. AND ABROAD

8. Commencing with the adherence of Iran and the United States to this declaration and the attached claims settlement agreement and the conclusion of arrangements for the establishment of the security account, which arrangements will be concluded within 30 days from the date of this Declaration, the United States will act to bring about the transfer to the Central Bank of all Iranian financial assets (meaning funds or securities) which are located in the United States and abroad, apart from those assets referred to in

Paragraph 5 and 6 above, to be held by the Central Bank in escrow until their transfer or return is required by Paragraph 3 above.

9. Commencing with the adherence by Iran and the United States to this declaration and the attached claims settlement agreement and the making by the Government of Algeria of the certification described in Paragraph 3 above, the United States will arrange, subject to the provisions of U.S. law applicable prior to November 14, 1979, for the transfer to Iran of all Iranian properties which are located in the United States and abroad and which are not within the scope of the preceding paragraphs.

NULLIFICATION OF SANCTIONS AND CLAIMS

10. Upon the making by the Government of Algeria of the certification described in Paragraph 3 above, the United States will revoke all trade sanctions which were directed against Iran in the period November 4, 1979, to date.

11. Upon the making by the Government of Algeria of the certification described in Paragraph 3 above, the United States will promptly withdraw all claims now pending against Iran before the International Court of Justice and will thereafter bar and preclude the prosecution against Iran of any pending or future claim of the United States or a United States national arising out of events occurring before the date of this declaration related to (A) the seizure of the 52 United States nationals on November 4, 1979, (B) their subsequent detention, (C) injury to United States property or property of the United States nationals within the United States Embassy compound in Tehran after November 3, 1979, and (D) injury to the United States nationals of their property as a result of popular movements in the course of the Islamic Revolution in Iran which were not an act of the Government of Iran. The United States will also bar and

preclude the prosecution against Iran in the courts of the United States of any pending or future claim asserted by persons other than the United States nationals arising out of the events specified in the preceding sentence.

Point IV: Return of the Assets of the Family of the Former Shah

12. Upon the making by the Government of Algeria of the certification described in Paragraph 3 above, the United States will freeze, and prohibit any transfer of, property and assets in the United States within the control of the estate of the former Shah or of any close relative of the former Shah served as a defendant in U.S. litigation brought by Iran to recover such property and assets as belonging to Iran. As to any such defendant, including the estate of the former Shah, the freeze order will remain in effect until such litigation is finally terminated. Violation of the freeze order shall be subject to the civil and criminal penalties prescribed by U.S. law.

13. Upon the making by the Government of Algeria of the certification described in Paragraph 3 above, the United States will order all persons within the U.S. jurisdiction to report to the U.S. Treasury within 30 days, for transmission to Iran, all information known to them, as of November 3, 1979, and as of the date of the order, with respect to the property and assets referred to in Paragraph 12. Violation of the requirement will be subject to the civil and criminal penalties prescribed by U.S. law.

14. Upon the making by the Government of Algeria of the certification described in Paragraph 3 above, the United States will make known, to all appropriate U.S. courts, that in any litigation of the kind described in Paragraph 12 above the claims of Iran should not be considered legally barred either by sovereign immunity principles or by the act of

state doctrine and that Iranian decrees and judgments relating to such assets should be enforced by such courts in accordance with United States law.

15. As to any judgment of a U.S. court which calls for the transfer of any property or assets to Iran, the United States hereby guarantees the enforcement of the final judgment to the extent that the property or assets exist within the United States.

16. If any dispute arises between the parties as to whether the United States has fulfilled any obligation imposed upon it by Paragraphs 12-15, inclusive, Iran may submit the dispute to binding arbitration by the tribunal established by, and in accordance with the provisions of, the claims settlement agreement. If the tribunal determines that Iran has suffered a loss as a result of a failure by the United States to fulfill such obligation, it shall make an appropriate award in favor of Iran which may be enforced by Iran in the courts of any nation in accordance with its laws.

SETTLEMENT OF DISPUTES

17. If any other dispute arises between the parties as to the interpretation or performance of any provision of this declaration, either party may submit the dispute to binding arbitration by the tribunal established by, and in accordance with the provisions of, the claims settlement agreement. Any decision of the tribunal with respect to such dispute, including any award of damage to compensate for a loss resulting from a breach of this declaration or the claims settlement agreement; may be enforced by the prevailing party in the courts of any nation in accordance with its laws.

Initialed on January 19, 1981

By Warren M. Christopher

Deputy Secretary of State of the Government of the United States

By virtue of the powers vested in him by his Government as deposited with the Government of Algeria.

Declaration of the Government of the Democratic and Popular Republic of Algeria Concerning the Settlement of Claims by the Government of the United States of America and the Government of the Islamic Republic of Iran.

The Government of the Democratic and Popular Republic of Algeria, on the basis of formal notice of adherence received from the Government of the Islamic Republic of Iran and the Government of the United States of America, now declares that Iran and the United States have agreed as follows:

ARTICLE I

Iran and the United States will promote the settlement of the claims described in Article II by the parties directly concerned. Any such claims not settled within six months from the date of entry into force of this agreement shall be submitted to binding third-party arbitration in accordance with the terms of this agreement. The aforementioned six months' period may be extended once by three months at the request of either party.

ARTICLE II

1. An International Arbitral Tribunal (the Iran-United States Claims Tribunal) is hereby established for the purpose of deciding claims of nationals of the United States against Iran and claims of nationals of Iran against the United States, and any counterclaim which arises out of the same contract, transaction or occurrence that constitutes the subject matter of that national's claim, if such claims and counterclaims are outstanding on the date of this agreement, whether or not filed with any court, and arise out of debts, contracts (including transactions which are the subject of letters of credit or bank guarantees), expropriations or other measures

affecting property rights, excluding claims described in Paragraph 11 of the Declaration of the Government of Algeria of January 19, 1981, and claims arising out of the actions of the United States in response to the conduct described in such paragraph, and excluding claims arising under a binding contract between the parties specifically providing that any disputes thereunder shall be within the sole jurisdiction of the competent Iranian courts in response to the Majlis position.

2. The Tribunal shall also have jurisdiction over official claims of the United States and Iran against each other arising out of contractual arrangements between them for the purchase and sale of goods and services.

3 The Tribunal shall have jurisdiction, as specified in Paragraphs 16-17 of the Declaration of the Government of Algeria of January 19, 1981, over any dispute as to the interpretation or performance of any provision of that declaration.

ARTICLE III

1. The Tribunal shall consist of nine members or such larger multiple of three as Iran and the United States may agree are necessary to conduct its business expeditiously. Within ninety days after the entry into force of this agreement, each government shall appoint one-third of the members. Within thirty days after their appointment, the members so appointed shall by mutual agreement select the remaining third of the members and appoint one of the remaining third President of the Tribunal. Claims may be decided by the full Tribunal or by a panel of three members of the Tribunal as the President shall determine. Each such panel shall be composed by the President and shall consist of one member appointed by each of the three methods set forth above.

2. Members of the Tribunal shall be appointed and the Tribunal shall conduct its business in accordance with the arbitration rules of the United Nations Commission on International Trade Law (UNCITRAL) except to the extent modified by the parties or by the tribunal to ensure that this agreement can be carried out. The UNCITNAL rules for appointing members of three-member Tribunals shall apply *mutatis mutandis* to the appointment of the Tribunal.

3. Claims of nationals of the United States and Iran that are within the scope of this agreement shall be presented to the Tribunal either by claimants themselves, or, in the case of claims of less than $250,000, by the Government of such national.

4. No claim may be filed with the Tribunal more than one year after the entry into force of this agreement or six months after the date the President is appointed, whichever is later. These deadlines do not apply to the procedures contemplated by Paragraphs 16 and 7 of the Declaration of the Government of Algeria of January 19, 1981.

ARTICLE IV

1. All decisions and awards of the Tribunal shall be final and binding.

2. The President of the Tribunal shall certify, as prescribed in Paragraph 7 of the Declaration of the Government of Algeria of January 19, 1981, when all arbitral awards under this agreement have been satisfied.

3. Any award which the Tribunal may render against either government shall be enforceable against such government in the courts of any nation in accordance with its laws.

ARTICLE V

The Tribunal shall decide all cases on the basis of respect for law, applying such choice of law rules and principles of commercial and international law as the Tribunal determines to be applicable, taking into account relevant usages of the trade, contract provisions and changed circumstances.

ARTICLE VI

1. The seat of the Tribunal shall be The Hague, The Netherlands, or any other place agreed by Iran and the United States.

2. Each government shall designate an agent at the seat of the Tribunal to represent it to the Tribunal and to receive notices or other communication directed to it or to its nationals, agencies, instrumentalities, or entitled in connection with proceedings before the Tribunal.

3. The expenses of the Tribunal shall be borne equally by the two governments.

4. Any question concerning the interpretation or application of this agreement shall be decided by the Tribunal upon the request of either Iran or the United States.

ARTICLE VII

For the purposes of this agreement:

1. A "national" of Iran or of the United States, as the case may be, means (a) a natural person who is a citizen of Iran or the United States; and (b) a corporation or other legal entity which is organized under the laws of Iran or the United States or any of its states or territories, the District of Columbia or the Commonwealth of Puerto Rico, if, collectively, natural persons who are citizens of such country hold, directly or indirectly, an interest in such corporation or entity equivalent to fifty per cent or more of its capital stock.

2. "Claims of nationals" of Iran or the United States, as the case may be, means claims owned continuously, from the date on which the claim arose to the date on which this agareement enters into force, by nationals of that state, including claims that are owned indirectly by such nationals through ownership of capital stock or other proprietary interests in judicial persons, provided that the ownership interests of such nationals, collectively, were sufficient at the time the claim arose to control the corporation or other entity, and provided, further, that the corporation or other entity is not itself entitled to bring a claim under the terms of this agreement. Claims referred to the Arbitral Tribunal shall, as of the date of filing of such claims with the Tribunal, be considered excluded from the jurisdiction of the courts of Iran, or of the United States, or of any other court.

3. "Iran" means the Government of Iran, any political subdivision of Iran, and any agency, instrumentality, or entity controlled by the Government of Iran or any political subdivision thereof.

4. The "United States" means the Government of the United States, any political subdivision of the United States, any agency, instrumentality or entity controlled by the Government of the United States or any political subdivision thereof.

ARTICLE VIII

This agreement shall enter into force when the Government of Algeria has received from both Iran and the United States a notification of adherence to the agreement.

Initialed on January 19, 1981
by Warren M. Christopher

Deputy Secretary of State of the Government of the United States

By virtue of the powers vested in him by his Government as deposited with the Government of Algeria.

EXHIBIT E.

Executive Order 12277 of January 19, 1981.

Direction To Transfer Iranian Government Assets.

By the authority vested in me as President by the Constitution and statutes of the United States, including Section 203 of the International Emergency Economic Powers Act [50 U.S.C. 1702], Section 301 of Title 3 of the United States Code, Section 1732 of Title 22 of the United States Code, and Section 301 of the National Emergencies Act [50 U.S.C. 1631], in view of the continuing unusual and extraordinary threat to the national security; foreign policy and economy of the United States upon which I based my declarations of national emergency in Executive Order 12170, issued November 14, 1979, and in Executive Order 12211, issued April 17, 1980, in order to implement agreements with the Government of Iran, as reflected in Declarations of the Government of the Democratic and Popular Republic of Algeria dated January 19, 1981, relating to the release of U.S. diplomats and nationals being held as hostages and to the resolution of claims of United States nationals against Iran, and to begin the process of normalization of relations between the United States and Iran and in which Iran and the United States instruct and inquire that the assets described in this order shall be transferred as set forth below by the holders of such assets, it is hereby ordered that as of the effective date of this Order:

1-101. The Federal Reserve Bank of New York is licensed, authorized, directed, and compelled to transfer to accounts at the Bank of England, and subsequently to transfer to accounts at the Bank of England established pursuant to an escrow agreement approved by the Secretary of the Treasury, all gold bullion, and other assets (or the equivalent

thereof) in its custody, of the Government of Iran, or its agencies, instrumentalities or controlled entities. Such transfers shall be executed when and in the manner directed by the Secretary of the Treasury. The Secretary of the Treasury is also authorized to license, authorize, direct, and compel the Federal Reserve Bank of New York to engage in whatever further transaction he deems appropriate and consistent with the purposes of this Order, including any transactions related the the return of such bullion and other assets pursuant to the escrow agreement.

1-102. (a) All licenses and authorizations for acquiring or exercising any right, power, or privilege, by court order, attachment, or otherwise, including the license contained in Section 535.504 of the Iranian Assets Control Regulations, with respect to the properties described in Section 1-101 of this Order are revoked and withdrawn.

(b) All rights, powers, and privileges relating to the properties described in section 1-101 of this Order and which derive from any attachment, injunction, other like proceedings or process, or other action in any litigation after November 14, 1979, at 8:10 a.m. EST, including those derived from Section 535.504 of the Iranian Assets Control Regulations, other than rights, powers, and privileges of the Government of Iran and its agencies, instrumentalities, and controlled entities, whether acquired by court order or otherwise, are nullified, and all persons claiming any such right, power, or privilege are hereafter barred from exercising the same.

(c) All persons subject to the jurisdiction of the United States are prohibited from acquiring or exercising any right, power, or privilege, whether by court order or otherwise, with respect to the properties (and any income earned thereon) referred to in Section 1-101 of this Order.

1-103. Compliance with this Order, any other Executive Order licensing, authorizing, directing, or compelling the transfer of the assets described in section 1-101 of this Order, or any regulations, instructions, or directions issued thereunder shall to the extent thereof be a full acquittance and discharge for all purposes of the obligation of the person making the same. No person shall be held liable in any court for or with respect to anything done or omitted in good faith in connection with the administration of, or pursuant to and in reliance on, such orders, regulations, instructions, or directions.

1-104. The Attorney General shall seek to intervene in any litigation within the United States which arises out of this Order and shall, among other things, defend the legality of, and all actions taken pursuant to, each of its provisions.

1-105. The Secretary of the Treasury is delegated and authorized to exercise all functions vested in the President by the International Emergency Economic Powers Act [50 U.S.C. 1701 *et seq.*] to carry out the purposes of this Order.

1-106. This Order shall be effective immediately.

THE WHITE HOUSE.

January 19, 1981.

/s/ Jimmy Carter

Executive Order 12278 of January 19, 1981.

Direction To Transfer Iranian Government Assets Overseas.

By the authority vested in me as President by the Constitution and statutes of the United States, including Section 203 of the International Emergency Economic Powers Act (50 U.S.C. 1702), Section 301 of Title 3 of the United States Code, Section 1732 of Title 22 of the United States Code, and Section 301 of the National Emergencies Act (50 U.S.C. 1831), in view of the continuing unusual and extraordinary threat to the national security, foreign policy and economy of the United States upon which I based my declarations of national emergency in Executive Order 12170, issued November 14, 1979, and in Executive Order 12211, issued April 17, 1980, in order to implement agreements with the Government of Iran, as reflected in Declarations of the Government of the Democratic and Popular Republic of Algeria dated January 19, 1981, relating to the release of U.S. diplomats and nationals being held as hostages and to the resolution of claims of United States nationals against Iran, and to begin the process of normalization of relations between the United States and Iran and in which Iran and the United States instruct and require that the assets described in this Order shall be transferred as set forth below by the holders of such assets, it is hereby ordered that as of the effective date of this Order:

1-101. Any branch or office of a United States bank or subsidiary thereof, which branch or office is located outside the territory of the United States and which on or after 8:10 a.m. E.S.T. on November 14, 1979 (a) has been or is in possession of funds or securities legally or beneficially owned by the Government of Iran or its agencies, instrumentalities, or controlled entities, or (b) has carried or is

carrying on its books deposits standing to the credit of or beneficially owned by such Government, agencies, instrumentalities, or controlled entitles, is licensed, authorized, directed, and compelled to transfer such funds, securities, and deposits, including interest from November 14, 1979, at commercially reasonable rates, to the account of the Federal Reserve Bank of New York at the Bank of England, to be held or transferred as directed by the Secretary of the Treasury. The Secretary of the Treasury shall determine when the transfers required by this section shall take place. The funds, securities and deposits described in this section shall be further transferred as provided for in the Declaration of the Government of the Democratic and Popular Republic of Algeria and its Annex.

1-102. Any banking institution subject to the jurisdiction of the United States that has executed a set-off on or after November 14, 1979, at 8:10 a.m. E.S.T. against iranian funds, securities, authorized, directed, and compelled to cancel such set-off and to transfer all funds, securities, and deposits which have been subject to such set-off, or deposits referred to in section 1-101 is hereby licensed, including interest from November 14, 1979, at commercially reasonable rates, pursuant to the provisions of section 1-101 of this Order.

1-103. If the funds, securities, and deposits described in section 1-101 are not promptly transferred to the control of the Government of Iran, such funds, securities, and deposits shall be returned to the banking institutions holding them on the effective date of this Order and the set-offs described in section 1-102 shall be in force as if this Order had not been issued and the status of all such funds, securities, deposits and set-offs shall be *status quo ante*.

1-104. (a) All licenses and authorizations for acquiring or exercising any right, power, or privilege, by court order,

attachment, or otherwise, including the license contained in Section 535.504 of the Iranian Assets Control Regulations, with respect to the properties described in Sections 1-101 and 1-102 of this Order are revoked and withdrawn.

(b) All rights, powers, and privileges relating to the properties described in Sections 1-101 and 1-102 of this Order and which derive from any attachment, injunction, other like proceedings or process, or other action in any litigation after November 14, 1979, at 8:10 a.m. E.S.T., including those derived from Section 535.504 of the Iranian Assets Control Regulations, other than rights, powers, and privileges of the Government of Iran and its agencies, instrumentalities, and controlled entities, whether acquired by court order or otherwise, are nullified, and all persons claiming any such right, power, or privilege are hereafter barred from exercising the same.

(c) All persons subject to the jurisdiction of the United States are prohibited from acquiring or exercising any right, power, or privilege, whether by court order or otherwise, with respect to the properties (and any income earned thereon) referred to in Sections 1-101 and 1-102 of this Order.

1-105. Compliance with this Order, any other Executive Order licensing, authorizing, directing, or compelling the transfer of the assets described in Sections 1-101 and 1-102 of this Order, or any regulations, instructions, or directions issued thereunder shall to the extent thereof be a full acquittance and discharge for all purposes of the obligation of the person making the same. No person shall be held liable in any court for or with respect to anything done or omitted in good faith in connection with the administration of, or pursuant to and in reliance on, such orders, regulations, instructions, or directions.

1-106. The Attorney General shall seek to intervene in any litigation within the United States which arises out of this Order and shall, among other things, defend the legality of, and all actions taken pursuant to, each of its provisions.

1-107. The Secretary of the Treasury is delegated and authorized to exercise all functions vested in the President by the International Emergency Economic Powers Act (50 U.S.C. 1701 *et seq.*) to carry out the purposes of this Order.

1-108. This Order shall be effective immediately.

THE WHITE HOUSE,
January 19, 1981.

/s/ Jimmy Carter

Executive Order 12279 of January 19, 1981.

Direction To Transfer Iranian Government Assets Held by Domestic Banks.

By the authority vested in me as President by the Constitution and statutes of the United States, including Section 203 of the International Emergency Economic Powers Act (50 U.S.C. 1702), Section 301 of Title 22 of the United States Code, Section 1732 of 3 Title 22 of the United States Code, and Section 301 of the National Emergencies Act (50 U.S.C. 1631), in view of the continuing unusual and extraordinary threat to the national security, foreign policy and economy of the United States upon which I based my declarations of national emergency in Executive Order 12170, issued November 14, 1979, and in Executive Order 12211, issued April 17, 1980, in order to implement agreements with the Government of Iran, as reflected in Declarations of the Government of the Democratic and Popular Republic of Algeria dated January 19, 1981, relating to the release of U.S. diplomats and nationals being held as hostages and to the resolution of claims of United States nationals against Iran, and to begin the process of normalization of relations between the United States and Iran and in which Iran and the United States instruct and require that the assets described in this Order shall be transferred as set forth below by the holders of such assets, it is hereby ordered that as of the effective date of this Order.

1-101. Any branch or office of a banking institution subject to the jurisdiction of the United States, which branch or office is located within the United States and is, on the effective date, either (a) in possession of funds or securities legally or beneficially owned by the Government of Iran or its agencies, instrumentalities, or controlled entities, or (b) carrying on its books deposits standing to the credit of or

beneficially owned by such Government, agencies, instrumentalities, or controlled entities is licensed, authorized, directed and compelled to transfer such funds, securities, and deposits, including interest from November 14, 1979, at commercially reasonable rates, to the Federal Reserve Bank of New York, to be held or transferred as directed by the Secretary of the Treasury.

1-102. (a) All licenses and authorizations for acquiring or exercising any right, power, or privilege, by court order, attachment, or otherwise, including the license contained in Section 535.504 of the Iranian Assets Control Regulations, with respect to the properties described in Section 1-101 of this Order are revoked and withdrawn.

(b) All rights, powers, and privileges relating to the properties described in section 1-101 of this Order and which derive from any attachment, injunction, other like proceedings or process, or other action in any litigation after November 14, 1979, at 8:10 a.m. EST, including those derived from Section 535.504 of the Iranian Assets Control Regulations, other than rights, powers, and privileges of the Government of Iran and its agencies, instrumentalities, and controlled entrities, whether acquired by court order or otherwise, are nullified, and all persons claiming any such right, power, or privilege are hereafter barred from exercising the same.

(c) All persons subject to the jurisdiction of the United States are prohibited from acquiring or exercising any right, power, or privilege whether by court order or otherwise, with respect to the properties (and any income thereon) referred to in Section 1-101 of this Order.

1-103. Compliance with this Order, any other Executive Order licensing, authorizing, directing or compelling the transfer of the assets described in section 1-101 of this

Order, or any regulations, instructions, or directions issued thereunder shall to the extent thereof be a full acquittance and discharge for all purposes of the obligation of the person making the same. No persons shall be held liable in any court for or with respect to anything done or omitted in good faith in connection with the administration of, or pursuant to and in reliance on, such orders, regulations, instructions, or directions.

1-104. The Attorney General shall seek to intervene in any litigation within the United States which arises out of this Order and shall, among other things, defend the legality of, and all actions taken pursuant to, each of its provisions.

1-105. The Secretary of the Treasury is delegated and authorized to exercise all functions vested in the President by the International Emergency Economic Powers Act [50 U.S.C. 1701 *et seq.*] to carry out the purposes of this Order.

1-106. This Order shall be effective immediately.

THE WHITE HOUSE

January 19, 1981.

/s/ Jimmy Carter

Executive Order 12280 of January 19, 1981.

Direction To Transfer Iranian Government Financial Assets Held by Non-Banking Institutions.

By the authority vested in me as President by the Constitution and statutes of the United States, including Section 203 of the International Emergency Economic Powers Act [50 U.S.C. 1702], Section 301 of Title 3 of the United States Code, Section 1732 of Title 22 of the United States Code, and Section 301 of the National Emergencies Act [50 U.S.C. 1631], in view of the continuing unusual and extraordinary threat to the national security, foreign policy and economy of the United States upon which I based my declarations of national emergency in Executive Order 12170, issued November 14, 1979, and in Executive Order 12211, issued April 17, 1980, in order to implement agreements with the Government of Iran, as reflected in Declarations of the Government of the Democratic and Popular Republic of Algeria dated January 19, 1981, relating to the release of U.S. diplomats and nationals being held as hostages and to the resolution of claims of United States nationals against Iran, and to begin the process of normalization of relations between the United States and Iran and in which Iran and the United States instruct and require that the assets described in this Order shall be transferred as set forth below by the holders of such assets, it is hereby ordered that as of the effective date of this Order:

1-101. Any person subject to the jurisdiction of the United States which is not a banking institution and is on the effective date in possession or control of funds or securities of Iran or its agencies, instrumentalities, or controlled entities is licensed, authorized, directed and compelled to transfer such funds or securities to the Federal Reserve Bank

of New York to be held or transferred as directed by the Secretary of the Treasury.

1-102. (a) All licenses and authorizations for acquiring or exercising any right, power, or privilege, by court order, attachment, or otherwise, including the license contained in Section 535.504 of the Iranian Assets Control Regulations, with respect to the properties described in Section 1-101 of this Order are revoked and withdrawn.

(b) All rights, powers, and privileges relating to the properties described in section 1-101 of this Order and which derive from any attachment, injunction, other like proceedings or process, or other action in any litigation after November 14, 1979, at 8:10 a.m. EST, including those derived from Section 535.504 of the Iranian Assets control Regulations, other than rights, powers, and privileges of the Government of Iran and its agencies, instrumentalities, and controlled entities, whether acquired by court order or otherwise, are nullified, and all persons claiming any such right, power, or privilege are hereafter barred from exercising the same.

(c) All persons subject to the jurisdiction of the United States are prohibited from acquiring or exercising any right, power, or privilege, whether by court order or otherwise, with respect to the properties (and any income earned thereon) referred to in Section 1-101 of this Order.

1-103. Compliance with the Executive Order, any other Executive Order licensing, authorizing, directing or compelling the transfer of the assets described in paragraph 1-101 of this Order, or any regulations, instructions, or directions issued thereunder shall to the extent thereof be a full acquittance and discharge for all purposes of the obligation of the person making the same. No person shall be held liable in any court for or with respect to anything done

or omitted in good faith in connection with the administration of, or pursuant to and in reliance on, such orders, regulations, instructions, or directions.

1-104. The Attorney General shall seek to intervene in any litigation within the United States which arises out of this Order and shall, among other things, defend the legality of an all actions taken pursuant to, each of its provisions.

1-105. The Secretary of the Treasury is delegated and authorized to exercise all functions vested in the President by the International Emergency Economic Powers Act [50 U.S.C. 1701 *et seq.*] to carry out the purposes of this Order.

1-106. This Order shall be effective immediately.

THE WHITE HOUSE.

January 19, 1981.

/s/ Jimmy Carter

Executive Order 12281 of January 19, 1981.

Direction To Transfer Certain Iranian Government Assets.

By the authority vested in me as President by the Constitution and statutes of the United States, including Section 203 of the International Emergency Economic Powers Act (50 U.S.C. 1702), Section 301 of Title 3 of the United States Code, Section 1732 of Title 22 of the United States Code, and Section 301 of the National Emergencies Act (50 U.S.C. 1631), in view of the continuing unusual and extraordinary threat to the national security, foreign policy and economy of the United States upon which I based my declarations of national emergency in Executive Order 12170, issued November 14, 1979, and in Executive Order 12211, issued April 17, 1980, in order to implement agreements with the Government of Iran, as reflected in Declarations of the Government of the Democratic and Popular Republic of Algeria dated January 19, 1981, relating to the release of U.S. diplomats and nationals being held as hostages and to the resolution of claims of United States nationals against Iran, and to begin the process of normalization of relations between the United States and Iran and in which Iran and the United States instruct and require that the assets described in this Order shall be transferred as set forth below by the holders of such assets, it is hereby ordered that as of the effective date of this Order:

1-101. All persons subject to the jurisdiction of the United States in possession or control of properties, not including funds and securities, owned by Iran or its agencies, instrumentalities, or controlled entities are licensed, authorized, directed and compelled to transfer such properties, as directed after the effective date of this Order by the Government of Iran, acting through its authorized agent.

Except where specifically stated, this license, authorization, and direction does not relieve persons subject to the jurisdiction of the United States from existing legal requirements other than those based upon the International Emergency Economic Powers Act.

1-102. (a) All licenses and authorizations for acquiring or exercising any right, power, or privilege, by court order, attachment, or otherwise, including the license contained in Section 535.504 of the Iranian Assets Control Regulations, with respect to the properties described in Section 1-101 of this Order are revoked and withdrawn.

(b) All rights, powers, and privileges relating to the properties described in section 1-101 of this Order and which derive from any attachment, injunction, other like proceedings or process, or other action in any litigation after November 14, 1979, at 8:10 a.m. EST, including those derived from Section 535.504 of the Iranian Assets Control Regulations, other than rights, powers, and privileges of the Government of Iran and its agencies, instrumentalities, and controlled entities, whether acquired by court order or otherwise, are nullified, and all persons claiming any such right, power, or privilege are hereafter barred from exercising the same.

(c) All persons subject to the jurisdiction of the United States are prohibited from acquiring or exercising any right, power, or privilege, whether by court order or otherwise, with respect to the properties (and any income earned thereon) referred to in Section 1-101 of this Order.

1-103. Compliance with this Executive Order, any other Executive Order licensing, authorizing, directing or compelling the transfer of the assets described in paragraph 1-101 of this Order, or any regulations, instructions, or directions issued thereunder shall to the extent thereof be

a full acquittance and discharge for all purposes of the obligation of the person making the same. No person shall be held liable in any court for or with respect to anything done or omitted in good faith in connection with the administration of, or pursuant to and in reliance on, such orders, regulations, instructions, or directions.

1-104. The Attorney General shall seek to intervene in any litigation within the United States which arises out of this Order and shall, among other things, defend the legality of, and all actions taken pursuant to, each of its provisions.

1-105. The Secretary of the Treasury is delegated and authorized to exercise all functions vested in the President by the International Emergency Economic Powers Act (50 U.S.C. 1701 *et seq.*) to carry out the purposes of this Order.

1-106. This Order shall be effective immediately.

THE WHITE HOUSE,
January 19, 1981.

/s/ Jimmy Carter

EXHIBIT F.

Executive Order 12294 of February 24, 1981.

Suspension of Litigation Against Iran.

By the authority vested in me as President by the Constitution and statutes of the United States, including Section 203 of the International Emergency Economic Powers Act (50 U.S.C. 1702), Section 301 of Title 3 of the United States Code, Section 1732 of Title 22 of the United States Code, and Section 301 of the National Emergencies Act (50 U.S.C. 1631), in view of the continuing unusual and extraordinary threat to the national security, foreign policy and economy of the United States upon which were based the declarations of national emergency in Executive Order No. 12170, issued November 14, 1979, and in Executive Order No. 12211, issued April 17, 1980, in light of the agreement with the Government of Iran, as reflected in the Declarations of the Government of the Democratic and Popular Republic of Algeria dated January 19, 1981, relating to the release of United States diplomats and nationals being held as hostages and to the resolution of claims of United States nationals against Iran, in order to implement Article II of the Declaration of Algeria concerning the settlement of claims and to begin the process of normalization of relations between the United States and Iran, it is hereby ordered that as of the effective date of this Order:

Section 1. All claims which may be presented to the Iran-United States Claims Tribunal under the terms of Article II of the Declaration of the Government of the Democratic and Popular Republic of Algeria Concerning the Settlement of Claims by the Government of the United States of America and the Government of the Islamic Republic of Iran, and all claims for equitable or other judicial relief in connection with such claims, are hereby suspended, except

as they may be presented to the Tribunal. During the period of this suspension, all such claims shall have no legal effect in any action now pending in any court of the United States, including the courts of any state or any locality thereof, the District of Columbia and Puerto Rico, or in any action commenced in any such court after the effective date of this Order. Nothing in this action precludes the commencement of an action after the effective date of this Order for the purpose of tolling the period of limitations for commencement of such action.

Section 2. Nothing in this Order shall require dismissal of any action for want of prosecution.

Section 3. Suspension under this Order of a claim or a portion thereof submitted to the Iran-United States Claims Tribunal for adjudication shall terminate upon a determination by the Tribunal that it does not have jurisdiction over such claim or such portion thereof.

Section 4. A determination by the Iran-United States Claims Tribunal on the merits that a claimant is not entitled to recover on a claim shall operate as a final resolution and discharge of the claim for all purposes. A determination by the Tribunal that a claimant shall have recovery on a claim in a specified amount shall operate as a final resolution and discharge of the claim for all purposes upon payment to the claimant of the full amount of the award, including any interest awarded by the Tribunal.

Section 5. Nothing in this Order shall apply to any claim concerning the validity or payment of a standby letter of credit, performance or payment bond or other similar instrument.

Section 6. Nothing in this Order shall prohibit the assertion of a counterclaim or set-off by a United States national in any judicial proceeding pending or hereafter commenced

by the Government of Iran, any political subdivision of Iran, any agency, instrumentality, or entity controlled by the Government of Iran or any political subdivision thereof.

Section 7. The Secretary of the Treasury is authorized to employ all powers granted to me by the International Emergency Economic Powers Act and by 22 U.S.C. § 1732 to carry out the purposes of this Order.

Section 8. Executive Order Nos. 12276 through 12285 of January 19, 1981, are ratified.

This Order shall be effective immediately and copies shall be transmitted to the Congress.

THE WHITE HOUSE,
February 24, 1981.

/s/ Ronald Reagan

Editorial Note: The President's message to the Congress, dated Feb. 24, 1981, on Executive Order 12294, is printed in the Weekly Compilation of Presidential Documents (vol. 17, no. 9).

EXHIBIT G.

February 26, 1981 Amendments to Iranian Assets Control Regulations, 31 C.F.R. Part 535.

DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

31 CFR Part 535

Iranian Assets Control Regulations;
Restrictions on Property of the Former Shah of Iran

AGENCY: Office of Foreign Assets Control.

ACTION: Final rule.

SUMMARY: The Office of Foreign Assets Control is amending the Iranian Assets Control Regulations. The purpose of the amendment is to prohibit transfers of all property and assets located in the United States within the control of the estate of the former Shah of Iran or any close relative of the former Shah served as a defendant in litigation in courts within the United States brought by Iran seeking the return of property alleged to belong to Iran. The need for the amendment is to implement the provisions of Executive Order No. 12284, signed by the President on January 19, 1981, requiring the blocking of such property and assets to protect the rights of litigants in courts within the United States, and directing the Secretary of the Treasury to require reports on such property and assets. The effect of the amendment is that all transfers of such property and assets will be prohibited when Iran proves to the Office of Foreign Assets Control (OFAC) that there has been service in such cases on such persons and OFAC publishes a notice to this effect in the Federal Register.

EFFECTIVE DATE: January 19, 1981.

FOR FURTHER INFORMATION CONTACT: Raymond W. Konan, Chief Counsel, Office of Foreign Assets Control, Department of the Treasury, Washington, D.C. 20220, Tel. (202) 376-0236).

SUPPLEMENTARY INFORMATION: Since the regulations involve a foreign affairs function, the provisions of the Administrative Procedure Act, 5 U.S.C. 553, requiring notice of proposed rulemaking, opportunity for public participation and delay in effective date are inapplicable.

Pursuant to Executive Order 12284 of January 19, 1981 the Office of Foreign Assets Control will conduct a census of property and assets within the control of the estate of the former Shah or close relatives of the former Shah served in litigation by Iran. Litigation has been filed naming numerous individuals. To avoid duplication, the census will be temporarily deferred to allow a period of time in which the Government of Iran may provide proof of service of defendants to the Office of Foreign Assets Control.

31 CFR Part 535 is amended as follows:

1. Section 535.217 is added to read as follows:

§ 535.217 Blocking of property of the former Shah of Iran and of certain other Iranian nationals.

(a) For the purpose of protecting the rights of litigants in courts within the United States, all property and assets located in the United States in the control of the estate of Mohammad Reza Pahlavi, the former Shah of Iran, or any close relative of the former Shah served as a defendant in litigation in such courts brought by Iran seeking the return of property alleged to belong to Iran, is blocked as to each such estate or person, until all such litigation against such estate or person is finally terminated. This provision shall apply only to such persons as to which Iran has furnished proof of service to the Office of Foreign Assets Control and

which the Office has identified in paragraph (b) of this section.

(b) (Reserved)

(c) The effective date of this section is January 19, 1981.

Section 535.580 is added to read as follows:

§ 635.580 Necessary living expenses of relatives of the former Shah of Iran.

The transfer, payment or withdrawal of property described in § 353.217 is authorized to the extent necessary to pay living expenses of any individual listed in that section. Living expenses for this purpose shall include food, housing, transportation, security and other personal expenses.

(Sec. 201-207, 91 Stat. 1625, 50 U.S.C. 1701-1706; E.O. No. 12170, 44 FR 65729; E.O. No. 12211, 45 FR 26685; E.O. No. 12284, 48 FR 7929)

Dated February 24, 1981.

Dennis M. O'Connell, *Director*.

Approved: John P. Simpson, *Acting Assistant Secretary (Enforcement and Operation)*.

Filed: February 25, 1981; Publication date: February 28, 1981.

[FR Doc. 51-1281] Filed: 1-25-81, 2:15 am; BILLING CODE 4810-25-4

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31 CFR PART 535

Iranian Assets Control Regulations

AGENCY: Office of Foreign Assets Control.

ACTION: Final Rule.

SUMMARY: The Office of Foreign Assets Control is amending the Iranian Assets Control Regulations. The purposes of the amendments are to add new directive provisions

and related definitions and interpretations; and to revoke certain trade and financial sanctions against Iran, in order to implement the agreements reached between the United States and Iran on January 19, 1981, and related agreements (the "agreements"), which commit the United States and Iran to take certain steps to free the American hostages and to solve certain claims between the United States and its nationals and Iran and its nationals.

EFFECTIVE DATE: January 19, 1981.

FOR FURTHER INFORMATION CONTACT: Raymond W. Konan, Chief Counsel, Office of Foreign Assets Control, Department of the Treasury, Washington, D.C. 20220, 202/376-0236.

SUPPLEMENTARY INFORMATION: The need for the amendments is (a) to implement Executive Order 12276, signed by the President on January 19, 1981, providing for the establishment of an Escrow Agreement and to implement Executive Orders 12277, 12278, 12279, 12280 and 12281 of the same date licensing, authorizing, directing and compelling: (1) the transfer by the Federal Reserve Bank of New York of all assets held by it for the Government of Iran and its entities ("Iran") to accounts held for the Federal Reserve Bank of New York at the Bank of England, (2) the transfer by overseas branches and offices of United States banks of all deposits and securities held by them for Iran to the account of the Federal Reserve Bank of New York at the Bank of England, (3) the transfer by domestic banks of all funds, securities and deposits held by them for Iran to the Federal Reserve Bank of New York, (4) the transfer by persons which are not banking institutions of funds or securities of Iran to the Federal Reserve Bank of New York and (5) the transfer by all persons subject to the jurisdiction of the United States of certain properties, not including funds and securities, owned by Iran, as directed by the

Government of Iran acting through its authorized agent; (b) to implement Executive Order 12282 of January 19, 1981, revoking various transactions involving Iran; and Executive Order 12283 of January 19, 1981, barring the prosecution of certain claims against Iran arising from specified occurrences and terminating any previously instituted judicial proceedings based upon such claims; and (c) to revoke miscellaneous provisions rendered unnecessary by the above described amendments. Certain of the amendments are also needed for purposes of prohibiting and nullifying the acquisition, by litigation or otherwise, of any rights or interests in the assets subject to the transfer directives which would interfere with the transfer of those assets and with implementation of the agreements between the United States and Iran.

The effect of the amendments is that prohibitions in the Regulations on the transfer of the assets covered by the directives, as well as rights and interests in the assets other than those of the Government of Iran or its entities will be removed so that the agreements can be effectuated. The amendments also have the effect of revoking miscellaneous sanctions against Iran; and of providing for the non-prosecution of certain claims against Iran.

Since the Regulations involve a foreign affairs function, the provisions of the Administrative Procedure Act, 5 U.S.C. 553, requiring notice of proposed rulemaking, opportunity for public participation, and delay in effective date are inapplicable.

The President has signed a series of executive orders implementing the agreements between the U.S. and Iran.

Executive Order 12276 of January 19, 1981, authorizes the Secretary of the Treasury to enter into and to license, authorize, direct and compel any appropriate official and/

or the Federal Reserve Bank of New York, as fiscal agent of the United States, to enter into escrow or related agreements under which certain money and other assets shall be transferred in implementation of the agreements between the United States and Iran. This Executive Order also authorizes the Secretary of the Treasury to license, authorize, direct and compel the Federal Reserve Bank of New York to receive certain money and other assets of the Government of Iran.

Executive Order 12277 of January 19, 1981, licenses, authorizes, directs and compels transfers into accounts at the Bank of England, and then into the escrow account, of assets of the Government of Iran held by the Federal Reserve Bank of New York.

Executive Order 12278 of January 19, 1981, licenses, authorizes, directs and compels the transfer of funds, securities and deposits of Iran, including interest at commercially reasonable rates, held by overseas branches and offices of United States banks to the account of the Federal Reserve Bank of New York at the Bank of England, to be held or transferred as directed by the Secretary of the Treasury. The assets transferred pursuant to this Executive Order are to be further transferred as provided for in the agreements.

Executive Order 12279 of January 19, 1981, licenses, authorizes, directs and compels the transfer of funds, securities and deposits of Iran, including interest at commercially reasonable rates, held by domestic branches or offices of banks which branches or offices are located within the United States to the Federal Reserve Bank of New York to be held or transferred as directed by the Secretary of the Treasury.

Executive Order 12280 of January 19, 1981, licenses, authorizes, directs and compels the transfer of funds and securities of Iran held by persons which are not banking institutions to the Federal Reserve Bank of New York to be held or transferred by the Secretary of the Treasury. This Executive Order applies to both overseas and domestically held assets.

Executive Order 12281 of January 19, 1981, licenses, authorizes, directs and compels the transfer by all persons subject to the jurisdiction of the United States of properties, not including funds and securities, owned by Iran, as directed by the Government of Iran acting through its authorized agent.

Executive Order 12282 of Janaury 19, 1981 revokes various sanctions, and prohibitions against transactions involving Iran.

Executive Order 12283 of Janaury 19, 1981, bars the prosecution of certain claims against Iran arising from specified occurrences and terminating any previously instituted judicial proceedings based upon such claims.

These amendments to the Iranian Assets Control Regulations implement the above-described executive orders and are summarized below.

1. *Direction to establish an escrow agreement.*

New § 535.210(a) licenses, authorizes, directs and compels the Federal Reserve Bank of New York as fiscal agent of the United States to enter into escrow or related agreements under which certain money and other assets will be transferred to the escrow account. In connection with the implementation of the escrow agreement. § 535.210(b) licenses, authorizes, directs and compels the Federal Reserve Bank of New York, as fiscal agent of the United States, to receive money and other assets in which Iran has an interest,

and to hold or to transfer those assets in such a manner as the Secretary of the Treasury deems necessary to fulfill the rights and obligations of the United States under the agreements between the United States and Iran.

2. *Direction involving transfers of assets held by the Federal Reserve Bank of New York.*

New § 535.211 licenses, authorizes, directs and compels the Federal Reserve Bank of New York to transfer to its account at the Bank of England, and subsequently to transfer to the escrow account, all gold bullion and other assets held by it for Iran when and in the manner directed by the Secretary of the Treasury.

3. *Direction to transfer assets held by overseas branches and offices of United States banks.*

New § 535.212 licenses, authorizes, directs and compels any overseas branch or office of a United States bank which, on or after 8:10 a.m. e.s.t., on November 14, 1979, has been or is in possession of funds or securities owned by Iran, or has carried or is carrying on its books deposits standing to the credit of Iran, to transfer such assets, including interest at commercially reasonable rates, to the account of the Federal Reserve Bank of New York at the Bank of England, to be held or transferred as directed by the Secretary of the Treasury. The funds, securities and deposits described in this section shall be further transferred as provided for in the agreements between the United States and Iran.

Section 535.212(b) provides that any bank subject to the jurisdiction of the United States that executed set-offs against deposits or securities held by them for Iran are authorized and directed to cancel such set-offs and to include in the directed transfer all assets subject to the set-offs, including interest at commercially reasonable rates.

4. *Direction to transfer assets held by domestic banks.*

New § 535.213 licenses, authorizes, directs and compels the transfer by domestic banks of all funds, securities and deposits held by them for Iran, including interest from November 14, 1979, at commercially reasonable rates, to the Federal Reserve Bank of New York, to be held or transferred as directed by the Secretary of the Treasury.

5. *Direction to transfer other financial assets.*

New § 535.214 licenses, authorizes, directs and compels persons subject to the jurisdiction of the United States which are not banking institutions to transfer all funds or securities of Iran in their possession or control to the Federal Reserve Bank of New York, to be held or transferred as directed by the Secretary of the Treasury. However, such transfers are not required until certain disputes as to Iran's entitlement are resolved.

6. *Direction to transfer other properties.*

New § 535.215 licenses, authorizes, directs and compels all persons subject to the jurisdiction of the United States to transfer properties, not including funds and securities, which are owned by Iran and are in the possession or control of such persons as directed by the Government of Iran, acting through its authorized agent. (New § 535.333 defines the term ''properties'' as used in § 535.215.)

7. *Certain claims against Iran barred.*

New § 535.216 bars persons subject to the jurisdiction of the United States from prosecuting, in any court within the United States or elsewhere, any claims against the Government of Iran arising out of certain specified events. These events relate to the seizure and detention of the hostages, injury to United States property or property of United States nationals within the United States Embassy compound in

Tehran and injury to United States nationals or their property as a result of popular movements in the course of the Islamic Revolution in Iran which were not an act of the Government of Iran.

Section 535.216 also bars the prosecution of such claims in any court within the United States by persons who are not United States nationals.

Section 535.216 bars further action in any previously instituted judicial proceedings which are based upon any of the above-described claims and provides that all such proceedings shall be terminated. In addition, § 535.216 prohibits the enforcement of any judicial order issued in the course of such proceedings.

8. *Prohibitions with respect to assets subject to transfer directives; Nullification of attachments and similar remedies; Prohibitions on judicial action.*

New § 535.218(a) revokes and withdraws all licenses and authorizations for acquiring or exercising any right, power or privilege by court order, attachment or otherwise, with respect to any of the properties covered by the directives in §§ 535.211 to 535.215. New § 535.218(b) provides that all rights, powers and privileges relating to the assets described in §§ 535.211 to 535.215 which derive from any attachment, injunction, other like proceedings or process, or other action in any litigation after November 14, 1979, at 8:10 a.m., e.s.t., including those derived from § 535.504 of the Regulations, whether acquired by court order or otherwise, are nullified. The nullification does not apply to rights, powers or privileges of Iran. New § 535.218(c) prohibits the acquisition or exercise of any right, power or privilege with respect to any property (and any income earned thereon) referred to in the directives in §§ 535.211 to 535.215. New § 535.218(d) provides that the prohibition

on the acquisition of rights contained in § 535.218(c) does not apply to the Government of Iran, its agencies, instrumentalities or controlled entities. New § 535.218(e) provides that § 535.218 does not revoke or withdraw certain specific licenses, issued prior to January 19, 1981, until April 15, 1981.

9. *Compliance with this part a legal acquittance and discharge of the obligation of any person.*

New § 535.219, pursuant to Section 201(a)(3) of the International Emergency Economic Powers Act, states that compliance in good faith with the directive provisions in §§ 535.210 to 535.215 or any other orders, regulations, instructions or directions which license, authorize, direct or compel the transfer of assets referred to in those sections shall, to the extent thereof, be a full acquittance and discharge for all purposes of the obligations of the person making the same. No person shall be held liable in any United States court for such good faith compliance.

10. *Timing of transactions.*

New § 535.220 provides that transfers of overseas bank assets required by § 535.212 shall be executed no later than 6:00 a.m., e.s.t., January 20, 1981.

11. *Compliance with other directive provisions.*

New § 535.221(a) provides that compliance with the directive provisions of §§ 535.213 and 535.214 pertaining to domestic bank assets and other financial assets requires that persons affected by these directives-implement them as soon as reasonably practicable. New § 535.221(b) states the U.S. policy until further notice, not to seek sanctions against any party who does not make any transfer required by §§ 535.213 to 535.215 while challenges to the authority of the United States to order the transfers are pending in U.S. courts.

12. *Suspension of claims eligible for Claims Tribunal.*

New § 535.222 provides (a) that all claims which may be presented to the Iran-United States Claims Tribunal provided for in the agreements between the United States and Iran and all claims for equitable or other relief in connection with such claims, are suspended, (b) that the section does not prohibit assertions of defense, set-off or counterclaim in any pending or future judicial proceeding commenced by Iran, (c) that the section does not preclude actions to toll periods of limitations for commencement of action, (d) that dismissal for want of prosecution is not required, (e) that the suspension shall terminate if the Claims Tribunal determines it lacks jurisdiction, (f) that a determination on the merits by the Tribunal shall operate as a final resolution and discharge of the claim, provided that full payment of the award is paid, and (g) that the section does not apply to certain claims concerning standby letters of credit, performance or payment bonds or other similar instruments.

13. *Definition of "properties."*

New § 535.333 defines "properties" as used in § 535.215 to include only uncontested and non-contingent liabilities and property interests of Iran. Specifically excluded are (1) funds, (2) securities, (3) bank deposits, and (4) obligations under standby letters of credit or similar instruments. Properties are not Iranian properties owned by Iran unless necessary obligations, charges and fees are discharged.

14. *Definition of an act of the Government of Iran.*

New § 535.334 defines an act of the Government of Iran as including any acts ordered, authorized, allowed or ratified by Iran or its entities.

15. *Definition of ''claim arising out of events in Iran.''*

New § 535.335 states that a claim is one arising out of events in Iran of the type specified in § 535.216 only if such event is the specific act that is the basis of the claim.

16. *Definition of ''funds.''*

New § 535.337 defines ''funds'' as used in this part to mean currency and coin, trust, escrow and special funds held by non-banking institutions.

17. *Status of Central Bank of Iran.*

New § 535.433 provides that, for purposes of this part, the Central Bank of Iran (Bank Markazi Iran) is an agency, instrumentality and controlled entity of the Government of Iran.

18. *Effect on other authorities.*

New § 535.437 states that nothing in this part relieves any persons from the necessity of securing licenses or other authorizations as required by the Secretary of State, the Secretary of Commerce or other relevant agency prior to executing the transactions authorized or directed by this part.

19. *Standby letters of credit.*

New § 535.438 states that nothing contained in §§ 535.212, 535.213 and 535.214 or in any other provision, revocation or amendment affects the prohibition in § 535.568 on the payment under certain standby letters of credit, performance or payment bonds and similar obligations. Section 535.568(a) prohibits the payment under a standby letter of credit into a blocked account provided that the account party avails itself of the specific licensing procedure to establish a blocked account on its books. The prohibition and the procedure remain in effect. The section also provides that

the term ''funds and securities'' as used in this part excludes the substitute blocked accounts established under § 535.568 relating to standby letters of credit, performance or payment bonds and similar obligations.

20. *Commercially reasonable interest rates.*

New § 535.440 provides that the meaning of the term ''commercially reasonable rates'' depends on the particular circumstances of the deposit.

21. *Exclusion of pre-judgment attachments and similar proceedings from general license for judicial proceedings.*

The general license in § 535.504 for judicial proceedings is amended to exclude pre-judgment attachments and other proceedings of similar or analogous effect with respect to property subject to §§ 535.211 though 535.215 and reference is made to the claims suspension provisions of § 535.222.

22. *Authorization for new transactions.*

New § 535.579 authorizes new transactions involving property of Iran. Transactions involving standby letters of credit, performance or payment bonds and similar obligations remain subject to the provisions of § 535.568. The section also highlights that attachment, injunction and similar orders are prohibited with respect to property not blocked on January 19, 1981, which is or becomes subject to U.S. jurisdiction for the express purpose of settling claims against Iran.

23. *Reports on transfers of other assets.*

Section 535.618 provides that any person failing to transfer property as directed by Iran is required to submit a brief report to the Office of Foreign Assets Control explaining why the property was not transferred.

24. *Revocation of general license for overseas set-offs.*

Section 535.902 is amended to revoke the general license in paragraph (a) authorizing overseas set-offs and by adding paragraph (c) to provide that for purposes of this section, set-offs include combinations of accounts or any similar actions.

25. *Revocation of sanctions, prohibitions and obsolete provisions.*

These amendments revoke various sanctions and prohibitions against transactions involving Iran, including certain prohibitions against imports from Iran, financial transactions with Iran, exports to Iran, and travel-related transactions. They also revoke miscellaneous definitions, interpretations and statements of licensing policy that are obsolete as the result of the above amendments.

Additional sections of the existing regulations may be revoked and additional provisions may be added, as appropriate.

31 CFR Part 535 is amended as follows:

1. Section 535.210 is added as follows:

§ 535.210 Direction for establishing an escrow agreement.

(a) The Federal Reserve Bank of New York, as fiscal agent of the United States, is licensed, authorized, directed and compelled to enter into escrow and related agreements under which certain money and other assets shall be credited by the Bank of England to escrow accounts.

(b) The Federal Reserve Bank of New York is licensed, authorized, directed and compelled, as fiscal agent of the United States, to receive certain money and other assets in which Iran or its agencies, instrumentalities or controlled entities have an interest and to hold or transfer such money and other assets, and any earnings or interest payable

thereon, in such manner and at such times as the Secretary of the Treasury deems necessary to fulfill the rights and obligations of the United States under the Declaration of the Government of the Democratic and Popular Republic of Algeria dated January 19, 1981, and the Undertakings of the Government of the United States of America and the Government of Islamic Republic of Iran with respect to the Declaration of the Government of the Democratic and Popular Republic of Algeria, and the escrow and related agreements described in paragraph (a) of this section. Such money and other assets may be invested, or not, at the discretion of the Federal Reserve Bank of New York, as fiscal agent of the United States.

2. Section 535.211 is added as follows:

§ 535.211 Direction involving transfers by the Federal Reserve Bank concerning certain Iranian property.

The Federal Reserve Bank of New York is licensed, authorized, directed and compelled to transfer to its account at the Bank of England, and subsequently to transfer to accounts in the name of the Central Bank of Algeria as Escrow Agent at the Bank of England that are established pursuant to an escrow and related agreements approved by the Secretary of the Treasury, all gold bullion, together with all other assets in its custody (or the cash equivalent thereof), of Iran or its agencies, instrumentalities or controlled entities. Such transfers, and whatever further related transactions are deemed appropriate by the Secretary of the Treasury, shall be executed when and in the manner directed by the Secretary of the Treasury.

3. Section 535.212 is added as follows:

§ 535.212 Direction to transfer property in which Iran or an Iranian entity has an interest by branches and offices of United States banks located outside the United States.

(a) Any branch or office of a United States bank or subsidiary thereof, which branch, office or subsidiary is located outside the territory of the United States, and which, on or after 8:10 a.m., e.s.t., on November 14, 1979, (1) has been or is in possession of funds or securities legally or beneficially owned by the Government of Iran or its agencies, instrumentalities, or controlled entities, or (2) has carried or is carrying on its books deposits standing to the credit of or beneficially owned by such government, its agencies, instrumentalities or controlled entities, is licensed, authorized, directed and compelled to transfer such funds, securities and deposits, held on January 19, 1981, including interest from November 14, 1979, at commercially reasonable rates, to the account of the Federal Reserve Bank of New York, as fiscal agent of the U.S., at the Bank of England, to be held or transferred as directed by the Secretary of the Treasury. The funds, securities and deposits described in this section shall be further transferred as provided for in the Declarations of the Government of the Democratic and Popular Republic of Algeria and the Undertakings of the Government of the United States of America and the Government of the Islamic Republic of Iran with respect to the Declaration.

(b) Any banking institution subject to the jurisdiction of the United States that has executed a set-off on or after 8:10 a.m., e.s.t., November 14, 1979, against Iranian funds, securities or deposits referred to in paragraph (a) of this section is hereby licensed, authorized, directed and compelled to cancel such set-off and to transfer all funds, securities and deposits which have been subject to such set-off, including interest from November 14, 1979, at com-

mercially reasonable rates, pursuant to the provisions of paragraph (a) of this section.

4. Section 535.213 is added as follows:

§ 535.213 Direction involving property held by offices of banks in the U.S. in which Iran or an Iranian entity has an interest.

(a) Any branch or office of a bank, which branch or office is located within the United States and is, on the effective date of this section, either (1) in possession of funds or securities legally or beneficially owned by the Government of Iran or its agencies, instrumentalities or controlled entities, or (2) carrying on its books deposits standing to the credit of or beneficially owned by such government or its agencies, instrumentalities or controlled entities, is licensed, authorized, directed and compelled to transfer such funds, securities and deposits, held on January 19, 1981, including interest from November 14, 1979, at commercially reasonable rates, to the Federal Reserve Bank of New York, as fiscal agent of the U.S., to be held or transferred as directed by the Secretary of the Treasury.

(b) Transfers of funds, securities or deposits under paragraph (a) of this section shall be in accordance with the provisions of § 535.221 of this part.

5. Section § 535.214 is added as follows:

§ 535.214 Direction involving other financial assets in which Iran or an Iranian entity has an interest held by any person subject to the jurisdiction of the United States.

(a) Any person subject to the jurisdiction of the United States which is not a banking institution and is on January 19, 1981, in possession or control of funds or securities of Iran or its agencies, instrumentalities or controlled entities is licensed, authorized, directed and compelled to transfer

such funds or securities to the Federal Reserve Bank of New York, as fiscal agent of the U.S., to be held or transferred as directed by the Secretary of the Treasury. However, such funds and securities need not be transferred until any disputes (not relating to any attachment, injunction or similar order) as to the entitlement of Iran and its entities to them are resolved.

(b) Transfers of funds, securities or deposits under paragraph (a) of this section shall be in accordance with the provisions of § 535.221 of this part.

(c) Any funds, securities or deposits subject to a valid attachment, injunction or other like proceeding or process not affected by § 535.218 need not be transferred as otherwise required by this section.

6. Section 535.215 is added as follows:

§ 535.215 Direction involving other properties in which Iran or an Iranian entity has an interest held by any person subject to the jurisdiction of the United States.

All persons subject to the jurisdiction of the United States in possession or control of properties, as defined in § 535.333 of this part, not including funds and securities owned by Iran or its agencies, instrumentalities or controlled entities are licensed, authorized, directed and compelled to transfer such properties held on January 19, 1981 as directed after that date by the Government of Iran, acting through its authorized agent. Except where specifically stated, this license, authorization and direction does not relieve persons subject to the jurisdiction of the United States from existing legal requirements other than those based upon the International Emergency Economic Powers Act.

7. Section 535.216 is added as follows:

§ 535.216 Prohibition against prosecution of certain claims.

(a) Persons subject to the jurisdiction of the United States are prohibited from prosecuting in any court within the United States or elsewhere, whether or not litigation was commenced before or after January 19, 1981, any claim against the Government of Iran arising out of events occurring before January 19, 1981 relating to:

(1) The seizure of the hostages on November 4, 1979;

(2) The subsequent detention of such hostages;

(3) Injury to United States property or property of United States nationals within the United States Embassy compound in Tehran after November 3, 1979; or

(4) Injury to United States nationals or their property as a result of popular movements in the course of the Islamic Revolution in Iran which were not an act of the Government of Iran.

(b) Any persons who are not United States nationals are prohibited from prosecuting any claim described in paragraph (a) of this section in any court within the United States.

(c) No further action, measure or process shall be taken after the effective date of this section in any judicial proceeding instituted before the effective date of this section which is based upon any claim described in paragraph (a) of this section, and all such proceedings shall be terminated.

(d) No judicial order issued in the course of the proceedings described in paragraph (c) of this section shall be enforced in any way.

8. Section 535.218 is added as follows:

§ 535.218 Prohibitions and nullifications with respect to property described in §§ 535.211, 535.212, 535.213, 535.214 and 535.215.

(a) All licenses and authorizations for acquiring or exercising any right, power or privilege, by court order,

attachment or otherwise, including the license contained in § 535.504, with respect to the property described in §§ 535.211, 535.212, 535.213, 535.214 and 535.215 are revoked and withdrawn.

(b) All rights, powers and privileges relating to the property described in §§ 535.211, 535.212, 535.213, 535.214 and 535.215 and which derive from any attachment, injunction, other like proceedings or process, or other action in any litigation after November 14, 1979 at 8:10 a.m. e.s.t., including those derived from § 535.504, other than rights, powers and privileges of the Government of Iran and its agencies, instrumentalities and controlled entities, whether acquired by court order or otherwise, are nullified, and all persons claiming any such right, power or privilege are hereafter barred from exercising the same.

(c) All persons subject to the jurisdiction of the United States are prohibited from acquiring or exercising any right, power or privilege, whether by court order or otherwise, with respect to property (and any income earned thereon) referred to in §§ 535.211, 535.212, 535.213, 535.214 and 535.215.

(d) The prohibitions contained in paragraph (c) of this section shall not apply to Iran, its agencies, instrumentalities or controlled entities.

(e) This section does not revoke or withdraw specific licenses authorizing the operation of blocked accounts which were issued prior to January 19, 1981 and which do not relate to litigation. Such licenses are revoked as of April 15, 1981, unless extended by further general or specific license.

9. Section 535.219 is added as follows:

§ 535.219 Discharge of obligation by compliance with this part.

Compliance with §§ 535.211, 535.212, 535.213, 535.214 and 535.215, or any other orders, regulations, instructions or directions issued pursuant to this part licensing, authorizing, directing or compelling the transfer of the assets described in those sections, shall, to the extent thereof, be a full acquittance and discharge for all purposes of the obligation of the person making the same. No person shall be held liable in any court for or with respect to anything done or omitted in good faith in connection with the administration of, or pursuant to and in reliance on, such orders, regulations, instructions or directions.

10. Section 535.220 is added as follows:

§ 535.220 Timing of transfers required by § 535.212.

Transfers required by § 535.212 to the account of the Federal Reserve bank of New York, as fiscal agent of the U.S. at the Bank of England shall be executed no later than 6 a.m., e.s.t., January 20, 1981, when the banking institution had knowledge of the terms of Executive Order 12278 of January 19, 1981.

11. Section 535.221 is added as follows:

§ 535.221 Compliance with directive provisions.

(a) Compliance with the directive provisions of §§ 535.213 and 535.214 requires that persons affected by these sections shall implement the directives as soon as reasonably practicable.

(b) Until the Secretary of the Treasury determines that the authority of the United States to order these transfers has been the subject of a definitive legal ruling, the United States Government will not seek to impose civil or criminal sanctions on any party who does not make the transfers

required by §§ 535.213, 535.214 and 535.215 and Executive Orders 12279-81 of January 19, 1981.

(c) Transfers of deposits or funds required by §§ 535.213 and 535.214 of this part shall be effected by means of wire transfer to the Federal Reserve Bank of New York for credit to the following account; Federal Reserve Bank of New York as fiscal agent of the United States. Special Deposit Account.

(d) Securities to be transferred as required by §§ 535.213 and 535.214 of this part must be delivered to the Federal Reserve Bank of New York in fully transferable form, accompanied by all necessary transfer documentation, *e.g.*, stock or bond powers, powers of attorney, and also accompanied by instructions to deposit such securities to the following account: Federal Reserve Bank of New York, as fiscal agent of the United States, Special Custody Account.

(1) Securities which are in book-entry, form shall be transferred by wire transfer to the Federal Reserve Bank of New York for credit to the account named in paragraph (d) of this section.

(2) Definitive securities which are in bearer or registered form shall be hand delivered or forwarded by registered mail, insured, to the Federal Reserve Bank of New York. Safekeeping Department.

(e) If a security in which Iran or an Iranian entity has an interest is evidenced by a depositary receipt or other evidence of a security, the legal owner of such security shall arrange to have it placed in registered form in the name of Iran or the Iranian entity having an interest in such security, as appropriate, and transferred pursuant to paragraph (d)(2) of this section.

(f) Securities in which Iran or an Iranian entity has an interest that are held in the name of a nominee must be re-

registered in the name of Iran or the Iranian entity having an interest in such security, as appropriate, and transferred pursuant to paragraph (d)(2) of this section.

(g) Any person delivering a security or securities to the Federal Reserve Bank of New York under paragraph (d) shall provide the Bank at least two business days prior written notice of such delivery, specifically identifying the sending person, the face or par amount and type of security, and whether the security is in bearer, registered or book entry form.

12. Section 535.222 is added as follows:

§ 535.222 Suspension of claims eligible for Claims Tribunal.

(a) All claims which may be presented to the Iran-United States Claims Tribunal under the terms of Article II of the Declaration of the Government of the Democratic and Popular Republic of Algeria Concerning the Settlement of Claims by the Government of the United States of America and the Government of the Islamic Republic of Iran, dated January 19, 1981, and all claims for equitable or other judicial relief in connection with such claims, are hereby suspended, except as they may be presented to the Tribunal. During the period of this suspension, all such claims shall have no legal effect in any action now pending in any court in the United States, including the courts of any state and any locality thereof, the District of Columbia and Puerto Rico, or in any action commenced in any such court after the effective date of this section.

(b) Nothing in paragraph (a) of this section shall prohibit the assertion of a defense, set-off or counterclaim in any pending or subsequent judicial proceeding commenced by the Government of Iran, any political subdivision of Iran,

or any agency, instrumentality or entity controlled by the Government of Iran or any political subdivision thereof.

(c) Nothing in this section precludes the commencement of an action after the effective date of this section for the purpose of tolling the period of limitations for commencement of such action.

(d) Nothing in this section shall require dismissal of any action for want of prosecution.

(e) Suspension under this section of a claim or a portion thereof submitted to the Iran-United States Claims Tribunal for adjudication shall terminate upon a determination by the Tribunal that it does not have jurisdiction over such claim or portion thereof.

(f) A determination by the Iran-United States Claims Tribunal on the merits that a claimant is not entitled to recover on a claim or part thereof shall operate as a final resolution and discharge of such claim or part thereof for all purposes. A determination by the Tribunal that a claimant shall have recovery on a claim or part thereof in a specified amount shall operate as a final resolution and discharge of such claim or part thereof for all purposes upon payment to the claimant of the full amount of the award including any interest awarded by the Tribunal.

(g) Nothing in this section shall apply to any claim concerning the validity or payment of a standby letter of credit, performance or payment bond or other similar instrument.

(h) The effective date of this section is February 24, 1981.

13. Section 535.333 is added as follows:

§ 535.333 Properties.

(a) The term ''properties'' as used in § 535.215 includes all uncontested and non-contingent liabilities and property interests of the Government of Iran, its agencies, instru-

mentalities or controlled entities, including debts. It does not include bank deposits or funds and securities. It also does not include obligations under standby letters of credit or similar instruments in the nature of performance bonds, including accounts established pursuant to § 535.568.

(b) Properties are not Iranian properties or owned by Iran unless all necessary obligations, charges and fees relating to such properties are paid and liens against such properties (not including attachments, injunctions and similar orders) are discharged.

(c) Liabilities and property interests may be considered contested if the holder thereof reasonably believes that a court would not require the holder, under applicable law to transfer the asset by virtue of the existence of a defense, counterclaim, set-off or similar reason. For purposes of this paragraph, the term ''holder'' shall include any person who possesses the property, or who, although not in physical possession of the property, has, by contract or otherwise, control over a third party who does in fact have physical possession of the property. A person is not a ''holder'' by virtue of being the beneficiary of an attachment injunction or similar order.

(d) Liabilities and property interests shall not be deemed to be contested solely because they are subject to an attachment, injunction or other similar order.

14. Section 535.334 is added as follows:

§ 535.334 Act of the Government of Iran.

For purposes of § 535.218, an act of the Government of Iran, includes any acts ordered, authorized, allowed, approved, or ratified by the Government of Iran, its agencies, instrumentalities or controlled entities.

15. Section 535.335 is added as follows:

§ 535.335 Claim arising out of events in Iran.

For purposes of § 535.216, a claim is one ''arising out of events'' of the type specified only if such event is the specific act that is the basis of the claim.

16. Section 535.337 is added as follows:

§ 535.337 Funds.

For purposes of this part, the term ''funds'' shall mean monies in trust, escrow and similar special funds held by non-banking institutions, currency and coins. It does not include accounts created under § 535.568.

17. Section 535.433 is added as follows:

§ 535.433 Central Bank of Iran.

The Central Bank of Iran (Bank Markazi Iran) is an agency, instrumentality and controlled entity of the Government of Iran for all purposes under this part.

18. Section 535.437 is added as follows:

§ 535.437 Effect on other authorities.

Nothing in this part in any way relieves any persons subject to the jurisdiction of the United States from securing licenses or other authorizations as required from the Secretary of State, the Secretary of Commerce or other relevant agency prior to executing the transactions authorized or directed by this part. This includes licenses for transactions involving military equipment.

19. Section 535.438 is added as follows:

§ 535.438 Standby letters of credit, performance or payment bonds and similar obligations.

Nothing contained in §§ 535.212, 535.213 and 535.214 or in any other provision or revocation or amendment of any provision in this part affects the prohibition in § 535.201

and the licensing procedure in § 535.568 relating to certain standby letters of credit, performance bonds and similar obligations. The term "funds and securities" as used in this part does not include substitute blocked accounts established under section 535.568 relating to standby letters of credit, performance or payment bonds and similar obligations.

20. Section 535.440 is added to read as follows:

§ 535.440 Commercially reasonable interest rates.

For purposes of §§ 535.212 and 535.213, what is meant by "commercially reasonable rates" depends on the particular circumstances of the deposit. Where, for example, a deposit has in fact operated as a demand account under Treasury license, it would be appropriate to treat the deposit for purposes of §§ 535.212 and 535.213 as a non-interest-bearing account.

21. Section 535.504 is revised to read as follows:

§ 535.504 Certain judicial proceedings with respect to property of Iran or Iranian entities.

(a) Subject to the limitations of paragraphs (b) and (c) of this section and § 535.222, judicial proceedings are authorized with respect to property in which on or after 8:10 a.m., e.s.t., November 14, 1979, there has existed an interest of Iran or an Iranian entity.

(b) This section does not authorize or license:

(1) Any pre-judgment attachment or any other proceeding of similar or analogous effect pertaining to any property (and any income earned thereon) subject to the provisions of § 535.211, 535.212, 535.213, 535.214 or 535.215 on January 19, 1981, including, but not limited to, a temporary restraining order or preliminary injunction, which operates as a restraint on property, for purposes of holding it within the jurisdiction of a court, or otherwise:

(2) Any payment or delivery out of a blocked account based upon a judicial proceeding, pertaining to any property subject to the provisions of §§ 535.211, 535.212, 535.213, 535.214 or 535.215 on January 19, 1981:

(c) A judicial proceeding is not authorized by this section if it is based on transactions which violated the prohibitions of this part.

22. Section 535.579 is added as follows:

§ 535.579 Authorization of new transactions concerning certain Iranian property.

(a) Transactions involving property in which Iran or an Iranian entity has an interest are unauthorized where:

(1) The property comes within the jurisdiction of the United States or into the control or possession of any person subject to the jurisdiction of the United States after January 19, 1981, or

(2) The interest in the property of Iran or an Iranian entity (e.g. exports consigned to Iran or an Iranian entity) arises after January 19, 1981.

(b) Transactions involving standby letters of credit, performance or payment bonds and similar obligations, entered into prior to January 20, 1981, described in § 535.568 remain subject to the prohibitions and procedures contained in §§ 535.201 and 535.568.

(c) Property not blocked under § 535.201 as of January 19, 1981, in which the Government of Iran or an Iranian entity has an interest, which after that date is or becomes subject to the jurisdiction of the United States or comes within the control or possession of a persons subject to the jurisdiction of the United States for the express purpose of settling claims against Iran or Iranian entities, is excluded from any authorization in this part for any attachment, in-

junction or other order of similar or analogous effect and any such attachment, injunction or order is prohibited by §§ 535.201 and 535.203.

23. Section 535.618 is added to read as follows:

§ 535.618 Report of contested property.

(a) *Requirement for reports*. Reports are required to be filed within 15 days of receipt of a direction from Iran to transfer any interests in property claimed or believed to be an interest of Iran which was blocked by the Iranian Assets Control Regulations if the party receiving the direction to transfer has not transferred such claimed interest in property.

(b) *Who must report*. Reports must be filed by every person subject to the jurisdiction of the United States who does not transfer any interest or claimed interest in property described in paragraph (a) of this section wihtin 15 days of a direction from Iran to transfer it.

(c) *Contents of report*. Each report shall contain the following information.

(1) Name and address of entity making the report.

(2) Name of person and entity directing the transfer.

(3) Date of the direction and date of its receipt.

(4) Description of the interest or claimed interest in property directed to be transferred.

(5) Statement or estimate of value of the interest or claimed interest in property.

(6) Explanation why property was not transferred as directed.

(7) Statement of any planned actions with respect to the interest or claimed interest in the property described.

(d) *Filing*, Reports shall be prepared in triplicate. Two copies shall be sent in a set to Unit 617. Office of Foreign Assets Control, Department of the Treasury, Washington,

D.C. 20220. The third copy must be retained with the reporter's records.

(e) *Confidentiality of reports.* Reports under this section are regarded as privileged and confidential.

24. Section 535.902 is revised to read as follows:

§ 535.902 Set-offs by U.S. owned or controlled firms abroad.

(a) Branches and subsidiaries in foreign countries of persons subject to the jurisdiction of the United States are licensed to set-off their claims against Iran or Iranian entities by debit to blocked accounts held by them for Iran or Iranian entities.

(b) The general license in paragraph (a) of this section is revoked as of January 19, 1981.

(c) For purposes of this section, set-offs include combinations of accounts and any similar actions.

25. Part 535 is amended by the revocation and removal of sections 535.204, 535.206, 535.207, 535.209, 535.331, 535.332, 535.418, 535.419, 535.422, 535.423, 535.424, 535.425, 535.426, 535.427, 535.428, 535.429, 535.430, 535.431, 535.432, 535.550, 535.562, 535.563, 535.572, 535.574, 535.575, 535.577, 535.578, 535.603.

§ 535.204 [Removed]

§ 535.206-207 [Removed]

§ 535.209 [Removed]

§ 535.331 [Removed]

§ 535.332 [Removed]

§ 535.418 [Removed]

§ 535.419 [Removed]

§ 535.422-432 [Removed]

§ 535.550 [Removed]

§ 535.562 [Removed]

§ 535.563 [Removed]

§ 535.572 [Removed]

§ 535.574 [Removed]

§ 535.575 [Removed]

§ 535.577 [Removed]

§ 535.578 [Removed]

§ 535.603 [Removed]

Dated: February 24, 1981.

Dennis M. O'Connell, *Director.*

Approved: John P. Simpson.

Acting Assistant Secretary, Enforcement and Operations.

Verification.

State of California, County of .....

I, the undersigned, say:

I have read the foregoing Complaint for Injunctive and Declaratory Relief and know its contents.

I am a partner Plaintiff Dames & Moore a party to this action, and am authorized to make this verification for and on its behalf, and I make this verification for that reason. I am informed and believe and on that ground allege that the matters stated in it are true.

Executed on April 27, 1981, at Los Angeles California.

I declare under penalty of perjury that the foregoing is true and correct.

/s/ Robert M. Perry,

Robert M. Perry

Motion to Dismiss Dames & Moore's Complaint for Failure to State a Claim Upon Which Relief May Be Granted, May 14, 1981.

United States District Court, Central District of California.

Dames & Moore, Plaintiff, v. Donald T. Regan, The Secretary of the United States of America, and The United States of America, Defendants.

Daniel, Mann, Johnson, & Mendenhall, a California corporation, Plaintiff, v. Donald T. Regan, The Secretary of The Treasury of The United States of America, and The United States of America, Defendants.

No. CV 81-2064 LEW (Px),
No. CV 81-1101 LEW (Px).

MOTION TO DISMISS DAMES & MOORE'S COMPLAINT FOR FAILURE TO STATE A CLAIM UPON WHICH RELIEF MAY BE GRANTED.

Dames & Moore has filed suit against the United States claiming that the actions of Presidents Carter and Reagan implementing the agreements with Iran, which secured the release of 52 American hostages, are unconstitutional. Because the challenged Presidental actions are lawful, Dames & Moore's complaint should be dismissed pursuant to Rule 12(b)(6), F.R.Civ.P., for failure to state a claim.

The accompanying memorandum of law explains the basis for the motion and responds to Dames & Moore's amicus curiae brief in support of Daniel, Mann, Johnson & Mendenhall's motion for a preliminary injunction. Accordingly,

the United States moves for an order dismissing Dames & Moore's complaint for failure to state a claim.

Respectfully submitted,

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ANDREA SHERIDAN ORDIN
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Memorandum in Support of Defendants' Motion to Dismiss and in Opposition to Dames & Moore's Brief as Amicus Curiae.

United States District Court, Central District of California.

Dames & Moore, Plaintiff, v. Donald T. Regan, The Secretary of the Treasury of the United States of America, and The United States of America, Defendants.

Daniel, Mann, Johnson, & Mendenhall, a California corporation, Plaintiff, v. Donald T. Regan, the Secretary of The Treasury of the United States of America and The United States of America, Defendants.

No. CV 81-2064 LEW (Px), No. CV 81-1101 LEW (Px).

MEMORANDUM IN SUPPORT OF DEFENDANTS' MOTION TO DISMISS AND IN OPPOSITION TO DAMES & MOORE'S BRIEF AS AMICUS CURIAE.

Introduction

Dames & Moore has filed a complaint against the United States alleging that the Presidential actions implementing the agreements with Iran are unconstitutional. Dames & Moore filed the same memorandum (''D & M Memo.'') in support of its motion for a preliminary injunction and as amicus curiae in support of Daniel, Mann, Johnson & Mendenhall's motion for a preliminary injunction in C.A. No. 81-1101 LEW (Px). The two actions have been consolidated before this Court which also has the underlying contractural actions against various Iranian defendants before it.

President Carter froze Iranian assets through Executive Order No. 12170 on November 14, 1979. Subsequent Treasury regulations licensed suits and pre-judgment attachments, where otherwise authorized, against Iranian entities. This license was revocable and did not authorize judgments. 31

C.F.R. 535.805; 535.504; 535.418. Pursuant to this limited, revocable license, Dames & Moore filed a commercial claim against numerous Iranian defendants. *Dames & Moore v. Atomic Energy Orangization of Iran, et al.*, C.A. No. CV-79-04918-LEW.

On January 19, 1981, Iran and the United States peacefully resolved many of their outstanding disputes through a series of international agreements. This resolution included the settlement of most claims against Iran through an international arbitral mechanism. President Carter issued ten Executive orders implementing the agreements. President Reagan assumed office the next day. He announced an intensive review of the agreements with Iran. Accordingly, the United States sought to stay all proceedings against Iran until February 26, 1981, at which time the United States intended to file a major Statement of Interest setting forth the position of the United States.

On February 18, 1981, however, this Court granted Dames & Moore summary judgment against the Atomic Energy Organization of Iran and the Islamic Republic of Iran. This court, of course, did not have President Reagan's Executive Order No. 12294, which suspended claims which may be presented to the arbitral tribunal, or any briefing by the United States supporting the validity of these Presidential actions before it at the time it signed the brief order of February 18, 1981. Dames & Moore is currently seeking to execute upon this unlicensed judgment. Absent a prompt ruling by this Court upholding the validity of the Presidential actions, the United States may well be thrown in breach of its international commitments.

ARGUMENT

Summary

Dames & Moore does not directly challenge the President's long-exercised power to settle claims. Dames &

Moore's challenge to the claims settlement power rests upon the theory that passage of the Foreign Sovereign Immunities Act, 28 U.S.C. 1602 *et seq.* (''FSIA''), *implicitly* repealed the President's claims settlement powers. Neither the language nor the legislative history of the FSIA support this extraordinary construction of the FSIA. The assault on the President's claim settlement powers also relies on two insubstantial arguments. The President did not purport to deprive United States courts of jurisdiction and did not confer sovereign immunity upon Iranian defendants.

The President's authority to return Iran's property is an essential concomitant of the claims settlement power. Moreover, the President's power is at its maximum here because it has been supplemented by the Congressional delegation of power over interests in foreign property during a declared national emergency under the International Emergency Economic Powers Act, 50 U.S.C. 1702 *et seq.* (''IEEPA'').

The ''taking'' claim is both premature and without merit. Even if Dames & Moore were ultimately to suffer a ''loss'' as a result of the settlement, such a ''loss'' is now completely speculative and would ultimately be a matter to be decided, if at all, by the Court of Claims. Claimants have, overall, benefited from the freeze and agreements with Iran. In any event, no valid ''taking'' claim exists in connection with an international claims settlement and the revocation of plaintiffs' revocable licenses for suit and attachment.

I. THE PRESIDENT HAS THE POWER TO SETTLE INTERNATIONAL CLAIMS.

A. The President Has Such Power Under Article II.

Dames & Moore concedes that the President has long had the power to settle international claims. D & M Memo. at 30. The concesssion is grudging; Dames & Moore does not acknowledge that the Supreme Court is among the ''several

courts'' which have repeatedly upheld the Article II claims settlement power. *Id.* ''That the President's control of foreign relations includes the settlement of claims is indisputable.'' *United States v. Pink*, 315 U.S. 203, 240 (1942) (Frankfurter, J., concurring). *See Security Pacific National Bank v. Government and State of Iran, et al.*, No. CV 79-4661-RVK (Gx) (C.D Cal. April 30, 1981); *Chas. T. Main Int. v. United States, et al.*, C.A. No. 81-315-C (D. Mass. March 17, 1981); *Unidyne Corporation v. Government of Iran, et al.*, C.A. No. 80-1029-A (E.D. Va. March 30, 1981); *Blount Brothers Corp., et al. v. Government of Iran, et al.*, C.A. No. C 79-1442 V (W.D. Wash. May, 1981) (slip opinion will be provided when received). Dames & Moore does not contest the principle that Executive agreements and implementing executive orders and regulations, if otherwise constitutional, become part of the law of the land, *See United States v. Pink, supra.* The President exercised his Article II power to settle claims, and that action became part of the law of the land which this Court applies in considering plaintiffs' suits. *Unidyne Corp., supra.* Slip Op. at 7; *Security Pacific National Bank, supra,* Slip. Op. at 36. On the merits, these suits should be dismissed because the underlying claims, as a matter of substantive law, are being settled through international arbitration. The Supreme Court has ruled that a claims settlement must be applied by the judiciary in these circumstances even if the plaintiff's claim was before the judiciary prior to the settlement and the claimant received nothing from the settlement. *United States v. Schooner Peggy*, 5 U.S. (1 Cranch) 103 (1801). The extensive dicta in *National Airmotive Corp. v. Government & State of Iran*, 449 F. Supp. 401 (D.D.C. 1980), a decision which merely dealt with a request for a stay during the hostage crisis, is irrelevant because it does not deal with a claims settlement.

The preliminary injunction granted in *Electronic Data Systems Corp. Iran v. Social Security Organization of the Government of Iran, et al.*, No. CA 3-79-0218-F (N.D. Tex. Feb. 12, 1981) (''EDS''), rests upon the erroneous assumption that the President was divesting that court of jurisdiction. The injunction was granted before President Reagan's Executive Order No. 12,294 (Feb. 24, 1981) made it clear that the President was doing no such thing. Moreover, the United States was unable to brief the merits of EDS' challenges to the President's authority because President Reagan had not completed his review of the agreements with Iran. Indeed, Judge Porter noted that his conclusions were merely preliminary because of this latter fact. *EDS, supra,* Slip Op. at 29. Similarly, this Court's entry of a judgment in favor of Dames & Moore against certain Iranian defendants on February 18, 1981 preceded President Reagan's Executive Order and the February 26, 1981 Statement of Interest of the United States.

Dames & Moore argues that the executive orders and regulations implementing the agreements with Iran are unconstitutional, and, therefore, not part of the law of the land applied by the courts. D & M Memo. at 28. Dames & Moore argues that the actions of Presidents Carter and Reagan are unlawful because they purportedly violate the separation of powers doctrine, the FSIA, and the First and Fifth Amendments. *Id.*

B. The President's Exercise Of The Claims Settlement Power Does Not Violate The Separation Of Powers Doctrine.

As articulated by Dames & Moore, the separation of powers doctrine means that neither Congress nor the President may ''interfere'' with pending judicial cases. D & M Memo. at 21. Ignoring the label ''interfere'', it is undisputed

that both Congress and the Executive branch take many actions which have dispositive effects upon pending cases. This is true because the courts follow the law as it exists at the time they decide a case. For example, a litigant may file a suit alleging a private right of action based upon a federal statute or regulation. If Congress or the Executive branch repeals the statute or rescinds the regulation the plaintiff loses on the "merits" of the claim.

United States v. Schooner Peggy, 5 U.S. (1 Cranch) 103 (1801), demonstrates that international agreements can have the same dispositive effect upon pending litigation. There, Americans received a lower court judgment confirming their claim to a captured French ship. The Supreme Court set aside the judgment on the basis of an intervening international agreement which required renunciation of the Americans' claim to the ship. Dames & Moore's primary response is that a treaty with France was involved there; here there is an executive agreement with Iran. The Supreme Court, however, has ruled that an international agreement made by executive agreement, instead of by treaty, becomes part of the law of the land applied by the courts. *United States v. Pink*, 315 U.S. 203, 230 (1942).

Indeed, Dames & Moore's own memorandum demonstrates that Article II powers can be employed lawfully even where they have a dispositive effect upon pending judicial cases. As Dames & Moore explains, prior to the FSIA the Executive branch could file Suggestions of Immunity in pending cases against foreign entities which led to dismissal of such cases. D & M Memo. at 24.* These Suggestions of Immunity were made solely under the President's Article

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*The FSIA, which was proposed by the Executive branch, ended the practice of Suggestions of Immunity and placed *sovereign immunity* decisions in the judiciary's province. The President, of course, has not purported to grant Iran sovereign immunity.

II powers and were binding upon the courts. *Ex parte Peru*, 318 U.S. 578, 588 (1943). Under Dames & Moore's legal theories, such Suggestions of Immunity must have been unconstitutional because they "interfere[d]" with the judiciary. D & M Memo. at 21. Yet, the Supreme Court found that Suggestions of Immunity were fully constitutional. *Ex parte Peru, supra.*

Here, the President has not purported to divest this Court of jurisdiction. Dames & Moore does not dispute this. It argues that the United States is engaged in a "semantic game" — that if this Court applied the rule of law which arose from the agreements with Iran the *effect* would be the same as a deprivation of this Court's jurisdiction. D & M Memo. at 5. This "effect" argument is a non-sequitur. As discussed above, many different Executive branch actions under the President's Article II powers (*e.g.*, changes in regulations, executive agreements, Suggestions of Immunity) have dispositive effects upon pending litigation. The *effect* of a court lacking jurisdiction over a claim is that the claim fails. Innumerable actions can cause a claim to fail. The suggestion that these actions are equivalent to divesting a court of jurisdiction because the effect is the same is illogical.

The "effect" argument is especially misplaced here because Dames & Moore's claim has not been terminated. At most, it has been suspended. Indeed, if this Court determines, as Dames & Moore intimates (D & M Memo. at 13 n. 4), that Dames & Moore's claim is not arguably arbitrable, its claim is not even suspended.

Dames & Moore's separation of powers argument is itself a semantic smokescreen built with repeated allusions to "usurp[ations]" of judicial power. Here, the President has exercised a vital Article II power which has again proven

essential to resolve an international crisis and aid American claimants. The courts are asked to apply the resulting law of the land.

C. The FSIA Did Not Implicitly Repeal The President's Claims Settlement Powers.

Dames & Moore argues that passage of the FSIA in 1976 divested the President of his Article II claims settlement power. D & M Memo. at 31. The FSIA was proposed by the Executive branch and was intended to withdraw its traditional role in making binding sovereign immunity determinations. The President has not purported to grant Iranian defendants sovereign immunity. The FSIA was *not* a new grant of jurisdiction to federal courts over suits against foreign governments. Such jurisdiction had long existed. See 28 U.S.C. 1332(a)(2) (1976). Moreover, the FSIA merely codified the long-standing "restrictive" view of sovereign immunity which was officially adopted by the United States in 1952 in the "Tate letter." *Unidyne Corp., supra.*, Slip Op. at 5-6.

The argument that the FSIA divested the President of claims settlement power is constructed from whole cloth. Nothing in the language of the FSIA purports to divest the President of his claims settlement power. Nothing in the legislative history purports to do so. Indeed, the legislative history supports the opposite conclusion. See, *e.g., Hearings Before the Subcommittee on Claims and Governmental Relations of the House Judiciary Committee on H.R. 3493: Immunities of Foreign States*, 93 Cong., 1st Sess. 26 (1973). It strains credulity to suggest that the Executive branch *proposed* a bill, without any discussion of its implications, which *sub silentio* deprived the President of his long exercised and vital Article II claims settlement power. As Dames & Moore itself stresses, repeals by implication are

disfavored and must be clear and manifest. D & M Memo. at 48. Moreover, absent the most compelling reasons, a court should not interpret a statute in a manner which places the United States in breach of its international obligations. *Murray v. The Charming Betsy*, 6 U.S. (2 Cranch) 64, 118 (1804); *Filartiga v. Pena-Irala*, 630 F.2d 876, 887 n. 20 (2d Cir. 1980). As Chief Judge Caffrey concluded, "Congress never intended, in passing the Foreign Sovereign Immunities Act, to cripple the negotiating power of American Presidents." *Chas. T. Main Int., supra*, Slip Op. at 8; *Security Pacific National Bank, supra*, Slip Op. at 36.

II. THE PRESIDENT LAWFULLY REVOKED PLAINTIFFS' LICENSES FOR ATTACHMENT AND NULLIFIED THE ATTACHMENTS.

A. IEEPA Authorizes the President's Actions.

The express language of IEEPA authorizes the President's actions. As Chief Judge Caffrey found:

> The Executive Orders are squarely within the authority vested in the President by IEEPA. IEEPA explicitly authorizes the President (1) to "compel . . . and . . . transfer . . . [of] any property in which foreign country or a national thereof has any interest," (2) to "nullify, void, prevent or prohibit, any acquisition [or] holding [of] . . . any property in which any foreign country or a national thereof has any interest," and (3) to "void . . . [the] exercising [of] any right . . . with respect to . . . any property in which any foreign country or a national thereof has any interest . . ." 50 U.S.C. §1701(a)(1)(B).

Chas. T. Main Int., supra, Slip Op. at 8. See also *Unidyne Corp., supra*, Slip Op. at 4-5; *Blount Brothers Corp., supra*.

Dames & Moore secured its pre-judgment attachments under a *revocable* licensee—which the President has re-

voked. 31 C.F.R. 535.805. Dames & Moore's license did not authorize it to secure a judgment. This revocation renders these attachments ineffective. 31 C.F.R. 535.203(e). See *Orvis v. Brownell*, 345 U.S. 187 (1953); *Propper v. Clark*, 337 U.S. 472 (1949); *Security Pacific National Bank, supra*, Slip Op. at 30-32 & n. 19.

The ability to return a foreign nation's property to it pursuant to a claims settlement is also a necessary concomitant to that Article II power.

> Those assets in American hands were a legitimate bargaining chip at the disposal of the President in negotiations with Iran for the release of the hostages. It would be meaningless to recognize the power of the President to negotiate with Frozen Iranian assets if he did not also have the power to transfer then at the conclusion of the negotiations. The release of the attachments is a necessary concomitant of the President's foreign relations under the Constitution and is further authorized by Congress under IEEPA.

Unidyne Corp., supra, Slip Op. at 7-8.

As Justice Jackson noted in his concurring opinion in *Youngstown Sheet & Tube Co. v. Sawyer*, 343 U.S. 579 (1952), where "the President acts pursuant to an express or implied authorization of Congress, his authority is at its maximum, for it includes all that he possesses in his own right plus all that Congress can delegate." *Id.*, at 653. The conjunction of the President's powers under Article II, IEEPA, and the Hostage Act, 22 U.S.C. 1732, brings the Presidential actions here squarely within this portion of Justice Jackson's test. *Chas. T. Main Int., supra*, Slip Op. at 8-9; *Security Pacific National Bank, supra*, Slip Op. at 12-13, 35-36.

B. The President Has Not Vested Iranian Assets.

Dames & Moore claims that the President has "vested" Iranian property. D & M Memo. at 50-51. Congress denied the President under IEEPA "the power to vest, *i.e.*, to take title to foreign property . . . ." H.R. Rep. No. 95-459, 95th Cong., 1st Sess. 3, 15 (1977). The president has not vested Iranian property. *Security Pacific National Bank, supra*, Slip. Op. at n. 15. Instead, the United States is returning the property to Iran and the Security Fund which will be used to pay judgments of the Tribunal. Indeed, Dames & Moore does not argue that the United States is vesting *Iranian* assets. Rather, Dames & Moore asserts that the United States has vested "our", *i.e.*, Dames & Moore's, assets. D & M Memo. at 51. This is merely a "taking" claim.

III. THE "TAKING" CLAIM IS MERITLESS.

A. The "Taking" Claim Is Premature.

If Dames & Moore ultimately believes that the claims settlement caused it a loss, it may choose to sue the United States. The United States will then defend against any taking claim. In any event, the United States must return Iran's financial assets by July 19, 1981, to avoid breach of its international commitments and the attendant dangers of severe diplomatic and financial repercussions.

B. There Has Been No Taking.

Dames & Moore ask this Court to focus on only a few elements of the Executive branch actions concerning Iranian assets and American claims against those assets. As Judge Bryant observed:

> The fact that there were Iranian assets here to attach is due in large measure to the lawful act of the President freezing those assets by Executive Order No. 12170,

44 Fed. Reg. 65729 (Nov. 15, 1979), after the seizure of the American hostages on November 4, 1979.

Unidyne Corp., supra, Slip Op. at 7. But for the freeze, most American claimants could have ended up with nothing because only three pre-judgment attachments were outstanding before November 14, 1979. The freeze helped enable the President to negotiate a settlement of those claims through an arbitral mechanism. Securing that settlement required a return of most of Iran's property. Therefore, American claimants against Iran, as a result of the sum of Executive branch actions, have gained substantially.

Dames & Moore's taking theory is particularly weak here because, as explained above, it never received more than a revocable license for suit and attachment. That license did not authorize it to secure a judgment.

President Carter reached the claims settlement with Iran not simply to free the hostages, but because he believed it was in the best interest of American claimants. As the Declaration of Secretary Haig, attached to the February 26, 1981 Statement of Interest explained, President Reagan agreed. The Tribunal has great advantages for American claimants. It will begin with a $1 billion Security Account. Dames & Moore asserts that this Security Account is insufficient because it asserts that American claims against Iran total $3-4 billion. D & M Memo. at 12. Dames & Moore cites no source for this estimate and its complaint contains no such allegation. Even if the $3-4 billion figure were true, it would merely represent plaintiffs' lawyers' maximum claims. The actual awards, regardless of whether the United States judiciary or Tribunal makes them, will be far less. Moreover, Iran must maintain at least $500 million in the Security Account until all awards of the Tribunal are satisfied in full. If Iran defaulted on this requirement, it would pay dearly. The Tribunal's awards are enforceable

in the courts of any country and the Tribunal could assess additional damages against Iran which would be similarly enforceable.

Iran will also be unable to raise important defenses, *e.g.*, sovereign immunity, act of state, and personal jurisdiction, which it would have had in United States courts. Without the Tribunal, many claimants could secure no recovery in United States courts. See, *e.g.*, *Security Pacific National Bank, supra,* Slip Op. at 32-33.

Plaintiffs who signed binding contracts with Iranian entities specifying Iranian courts as the sole forum for dispute resolution also have no taking claim. Any loss they may suffer is because of the contracts they negotiated. Moreover, if the Tribunal does not hear a claim because of an Iranian forum clause, the suspension of the claim before the United States courts terminates and the American claimant may still achieve full recovery.

The case law does not support Dames & Moore's taking claims. Dames & Moore relies primarily upon *Seery v. United States,* 127 F. Supp. 601 (Ct. Cl. 1955), and *Gray v. United States,* 21 Ct. Cl. 340 (1886) (advisory opinion). *Seery v. United States* does not address the issues in these cases. There, the United States claimed that an agreement with Austria barred a United States citizen from pursuing a claim against the *United States*. 127 F. Supp. at 603, 606. Here, only claims against Iran have been settled. See, *Security Pacific National Bank, supra,* Slip Op. at 38 n. 26.

Gray v. United States, 21 Ct. Cl. 340 (1886), does not support Dames & Moore. *Gray* was "strictly an advisory opinion which was not binding upon either of the parties and cannot be binding upon subsequent courts." *Aris Gloves, Inc. v. United States,* 420 F.2d 1386, 1393 (Ct. Cl.

1970). As the Supreme Court said of *Gray* "[w]e think that payments thus prescribed to be made were purposely brought within the category of payments by way of gratuity, payments as of grace not of right." *Blagge v. Balch*, 162 U.S. 439, 457 (1896). See *Security Pacific National Bank, supra*, Slip Op. at 37-39.

Dames & Moore also relies upon *National Airmotive Corp. v. Government & State of Iran, supra* and *Behring International, Inc. v. Miller*, No. 80-2864 (D.N.J. Dec. 24, 1980). Neither of these cases is entitled to any weight on the taking claim. The statements in these opinions relied on here are dicta on a matter which was not even at issue in those cases.

IV. THE CONSTITUTIONAL CLAIMS LACK MERIT.

Dames & Moore claims a right of access to the courts; it argues that a civil claimant has a right under the First and Fifth Amendments to have its claim against a foreign entity heard by a United States court. No case has ever so held. These are cases involving the rights of criminal defendants and prisoners to a judicial forum, but these cases are inapplicable to civil claimants unless a fundamental human relationship (*e.g.*, divorce) is at stake in the civil process. *Ortwein v. Schwab*, 410 U.S. 656 (1973); *United States v. Kras*, 409 U.S. 434 (1973); *Boddie v. Connecticut*, 401 U.S. 371, 382-83 (1971). Here, Dames & Moore's claims are simply commercial claims against Iran. The availability of an alternative forum also prevents a finding of an unconstitutional denial of access. *Woods v. Holy Cross Hospital*, 591 F.2d 1164, 1173, n. 16 (5th Cir. 1979). The dictum in *National Airmotive Corp, supra* is again the authority relied upon by Dames & Moore. D & M Memo. at 42.

Nor has Dames & Moore suffered a denial of equal protection. In essence, it complains that the United States was able to negotiate a more favorable claims settlement for banks than for other claimants.

The premise of its argument is that the United States deliberately discriminated against non-bank plaintiffs. D & M Memo. at 35 n. 12. Again, this claim is not raised in the complaint and no supporting facts have been plead. The notion that the United States, not Iran, was purposely seeking to bar the claims of American entities like the plaintiff's is absurd.

CONCLUSION.

The President has lawfully exercised his constitutional and statutory claims settlement powers. This Court should dismiss Dames & Moore's complaint for failure to state a claim upon which relief may be granted.

Respectfully submitted,

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ORDER.

United States District Court, Central District of California.

Daniel, Mann, Johnson & Mendenhall, a California corporation, Plaintiff, v. Donald T. Regan, et al., Defendants. CV 81-1101 LEW.

Dames & Moore, a partnership, Plaintiff, v. Donald T. Regan, et al., Defendants. CV 81-2064 LEW.

Dames & Moore, a partnership, Plaintiff, v. Atomic Energy Organization of Iran, et al., Defendants. CV 79-4918.

Daniel, Mann, Johnson & Mendenhall, a California corporation, Plaintiff, v. Imperial Government of Iran, et al., Defendants. CV 80-277 LEW.

Filed: May 28, 1981.

In CV 81-1101 LEW and CV 81-2064 LEW, plaintiffs, Dames & Moore and Daniel, Mann, Johnson & Mendenhall, have filed motions for preliminary injunction. Defendants in CV 81-1101 LEW and CV 81-2064 LEW have filed motions to dismiss. The United States of America has also been allowed to intervene as a party defendant in CV 789-4918 LEW. The United States has filed a motion to stay the judgment entered on February 18, 1981, in CV 79-4918 LEW.

All parties in CV 79-4918 LEW and CV 80-277 LEW have been given the opportunity to brief the issues raised by the motions in CV 81-1101 LEW and CV 81-2064 LEW. Because the Court's resolution of the issues raised in CV 81-1101 LEW and CV 81-2064 LEW will be dispositive of the question of whether the attachments in CV 79-4918 LEW and CV 80-277 LEW are without legal basis, the Court has chosen to issue this consolidated order. After consideration of all of the papers submitted in connection

with these matters, and oral argument thereon, and good cause appearing therefor,

IT IS ORDERED that

Plaintiffs' motions for preliminary injunction in CV 81-1101 LEW and CV 81-2064 LEW are denied.

Defendants' motions to dismiss in CV 81-1101 LEW and CV 81 2004 LEW are granted. The complaints of Daniel, Mann, Johnson & Mendenhall and Dames & Moore in CV 81-1101 LEW and CV 81-2064 LEW are hereby dismissed for failure to state a claim upon which relief may be granted.

The United States's motion to stay the judgment entered on February 18, 1981, in CV 79-4918 LEW is granted.

All proceedings in CV 79-4918 LEW and CV 80-277 LEW are hereby stayed. The attachments in CV 79-4918 LEW and CV 80-277 LEW are vacated as without further legal basis. The vacating of the attachments is stayed until July 19, 1981. To the extent that the decision of the Court to vacate the attachments is not a final and appealable order, the issue of the validity of the Executive Orders that suspend all claims against Iran and nullify attachments against Iranian assets is certified for interlocutory appeal pursuant to 28 U.S.C. §1292(b) on the grounds that it is a controlling question of law as to which there is substantial ground for difference of opinion and that the immediate appeal of this order will materially advance the termination of this litigation.

DATED: May 28, 1981

/s/ Laughlin E. Waters
Laughlin E. Waters
United States District Judge

CONSTITUTION OF THE UNITED STATES.

* * *

Article I

Section. 1. All legislative Powers herein granted shall be vested in a Congress of the United States, which shall consist of a Senate and House of Representatives.

* * *

Section 8. The Congress shall have Power To lay and collect Taxes, Duties, Imposts and Excises, to pay the Debts and provide for the common Defence and general Welfare of the United States; but all Duties, Imposts and Excises shall be uniform throughout the United States;

* * *

To regulate Commerce with foreign Nations, and among the several States, and with the Indian Tribes;

* * *

To constitute Tribunals inferior to the supreme Court;

* * *

Article II.

* * *

Section. 2. The President . . .

. . . shall have Power, by and with the Advice and Consent of the Senate, to make Treaties, provided two thirds of the Senators present concur; and he shall nominate, and by and with the Advice and Consent of the Senate, shall appoint Ambassadors. . . .

* * *

Article III

Section. 1. The judicial Power of the United States, shall be vested in one supreme Court, and in such inferior Courts

as the Congress may from time to time ordain and establish.

. . .

Section 2. The judicial Power shall extend to all Cases, in Law and Equity, arising under this Constitution, the Laws of the United States, and Treaties made, or which shall be made, under their Authority; — to all Cases affecting Ambassadors, other public Ministers and Consuls; — to all Cases of admiralty and maritime Jurisdiction; — to Controversies to which the United States shall be a Party; — to Controversies between two or more States; — between a State and Citizens of another State; — between citizens of different States, — between Citizens of the same State claiming Lands under Grants of different States, and between a State, or the Citizens thereof, and foreign States, Citizens or Subjects.

* * *

Article VI

* * *

This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding.

* * *

Amendment 1

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or of the right of the people peacably to assemble, and to petition the government for a redress of grievances.

Amendment 5

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

Foreign Sovereign Immunities Act of 1976 28 U.S.C. §§ 1602 *et seq.*

§ 1602. Findings and declaration of purpose

The Congress finds that the determination by United States courts of the claims of foreign states to immunity from the jurisdiction of such courts would serve the interests of justice and would protect the rights of both foreign states and litigants in United States courts. Under international law, states are not immune from the jurisdiction of foreign courts insofar as their commercial activites are concerned, and their commercial property may be levied upon for the satisfaction of judgments rendered against them in connection with their commercial activities. Claims of foreign states to immunity should henceforth be decided by courts of the United States and of the States in conformity with the principles set forth in this chapter.

§ 1603. Definitions

For purposes of this chapter —

(a) A ''foreign state'', except as used in section 1608 of this title, includes a political subdivision of a foreign state or an agency or instrumentality of a foreign state as defined in subsection (b).

(b) An ''agency or instrumentality of a foreign state'' means any entity —

(1) which is a separate legal person, corporate or otherwise, and

(2) which is an organ of a foreign state or political subdivision thereof, or a majority of whose shares or other ownership interest is owned by a foreign state or political subdivision thereof, and

(3) which is neither a citizen of a State of the United States as defined in section 1332 (c) and (d) of this title, nor created under the laws of any third country.

(c) The ''United States'' includes all territory and waters, continental or insular, subject to the jurisdiction of the Untied States.

(d) A ''commercial activity'' means either a regular course of commercial conduct or a particular commercial transaction or act. The commercial character of an activity shall be determined by reference to the nature of the course of conduct or particular transaction or act, rather than by reference to its purpose.

(e) A ''commercial activity carried on in the United States by a foreign state'' means commercial activity carried on by such state and having substantial contact with the United States.

§ 1604. Immunity of a foreign state from jurisdiction

Subject to existing international agreements to which the United States is a party at the time of enactment of this Act a foreign state shall be immune from the jurisdiction of the courts of the United States and of the States except as provided in sections 1605 to 1607 of this chapter.

§ 1605. General exceptions to the jurisdictional immunity of a foreign state

(a) A foreign state shall not be immune from the jurisdiction of courts of the United States or of the States in any case —

(1) in which the foreign state has waived its immunity either explicitly or by implication, notwithstanding any withdrawal of the waiver which the foreign state may purport to effect except in accordance with the terms of the waiver;

(2) in which the action is based upon a commercial activity carried on in the United States by the foreign state; or upon an act performed in the United States in connection with a commercial activity of the foreign state elsewhere; or upon an act outside the territory of the United States in connection with a commercial ac-

tivity of the foreign state elsewhere and that act causes a direct effect in the United States;

(3) in which rights in property taken in violation of international law are in issue and that property or any property exchanged for such property is present in the United States in connection with a commercial activitiy carried on in the United States by the foreign state; or that property or any property exchanged for such property is owned or operated by an agency or instrumentality of the foreign state and that agency or instrumentality is engaged in a commercial activity in the United States;

(4) in which rights in property in the United States acquired by succession or gift or rights in immovable property situated in the United States are in issue; or

(5) not otherwise encompassed in paragraph (2) above, in which money damages are sought against a foreign state for personal injury or death, or damage to or loss of property, occurring in the United States and caused by the tortious act or omission of that foreign state or of any official or employee of that foreign state while acting within the scope of his office or employment; except this paragraph shall not apply to —

(A) any claim based upon the exercise or performance or the failure to exercise or perform a discretionary function regardless of whether the discretion be abused, or

(B) any claim arising out of malicious prosecution, abuse of process, libel, slander, misrepresentation, deceit, or interference with contract rights.

(b) A foreign state shall not be immune from the jurisdiction of the courts of the United States in any case in which a suit in admiralty is brought to enforce a maritime lien against a vessel or cargo of the foreign state, which

maritime lien is based upon a commercial activity of the foreign state: *Provided*, That —

(1) notice of the suit is given by delivery of a copy of the summons and of the complaint to the person, or his agent, having possession of the vessel or cargo against which the maritime lien is asserted; but such notice shall not be deemed to have been delivered, nor may it thereafter be delivered, if the vessel or cargo is arrested pursuant to process obtained on behalf of the party bringing the suit — unless the party was unaware that the vessel or cargo of a foreign state was involved, in which event the service of process of arrest shall be deemed to constitute valid delivery of such notice; and

(2) notice to the foreign state of the commencement of suit as provided in section 1608 of this title is initiated within ten days either of the delivery of notice as provided in subsection (b)(1) of this section or, in the case of a party who was unaware that the vessel or cargo of a foreign state was involved, of the date such party determined the existence of the foreign state's interest.

Whenever notice is delivered under subsection (b)(1) of this section, the maritime lien shall thereafter be deemed to be an in personam claim against the foreign state which at that time owns the vessel or cargo involved: *Provided*, That a court may not award judgment against the foreign state in an amount greater than the value of the vessel or cargo upon which the maritime lien arose, such value to be determined as of the time notice is served under subsection (b)(1) of this section.

§ 1606. Extent of liability

As to any claim for relief with respect to which a foreign state is not entitled to immunity under section 1605 or 1607 of this chapter, the foreign state shall be liable in the same

manner and to the same extent as a private individual under like circumstances; but a foreign state except for an agency or instrumentality thereof shall not be liable for punitive damages; if, however, in any case wherein death was caused, the law of the place where the action or omission occurred provides, or has been construed to provide, for damages only punitive in nature, the foreign state shall be liable for actual or compensatory damages measured by the pecuniary injuries resulting from such death which were incurred by the persons for whose benefit the action was brought.

§ 1607. Counterclaims

In any action brought by a foreign state, or in which a foreign state intervenes, in a court of the United States or of a State, the foreign state shall not be accorded immunity with respect to any counterclaim —

(a) for which a foreign state would not be entitled to immunity under section 1605 of this chapter had such claim been brought in a separate action against the foreign state; or

(b) arising out of the transaction or occurrence that is the subject matter of the claim of the foreign state; or

(c) to the extent that the counterclaim does not seek relief exceeding in amount or differing in kind from that sought by the foreign state.

§ 1608. Service; time to answer; default

(a) Service in the courts of the United States and of the States shall be made upon a foreign state or political subdivision of a foreign state:

(1) by delivery of a copy of the summons and complaint in accordance with any special arrangement for service between the plaintiff and the foreign state or political subdivision; or

(2) if no special arrangement exists, by delivery of a copy of the summons and complaint in accordance with an applicable international convention on service of judicial documents; or

(3) if service cannot be made under paragraphs (1) or (2), by sending a copy of the summons and complaint and a notice of suit, together with a translation of each into the official language of the foreign state, by any form of mail requiring a signed receipt, to be addressed and dispatched by the clerk of the court to the head of the ministry of foreign affairs of the foreign state concerned, or

(4) if service cannot be made within 30 days under paragraph (3), by sending two copies of the summons and complaint and a notice of suit, together with a translation of each into the official language of the foreign state, by any form of mail requiring a signed receipt, to be addressed and dispatched by the clerk of the court to the Secretary of State in Washington, District of Columbia, to the attention of the Director of Special Consular Services — and the Secretary shall transmit one copy of the papers through diplomatic channels to the foreign state and shall send to the clerk of the court a certified copy of the diplomatic note indicating when the papers were transmitted.

As used in this subsection, a ''notice of suit'' shall mean a notice addressed to a foreign state and in a form prescribed by the Secretary of State by regulation.

(b) Service in the courts of the United States and of the States shall be made upon an agency or instrumentality of a foreign state:

(1) by delivery of a copy of the summons and complaint in accordance with any special arrangement for service between the plaintiff and the agency or instrumentality of a foreign state:

(1) by delivery of a copy of the summons and complaint in accordance with any special arrangement for service between the plaintiff and the agency or instrumentality; or

(2) if no special arrangement exists, by delivery of a copy of the summons and complaint either to an officer, a managing or general agent, or to any other agent authorized by appointment or by law to receive service of process in the United States; or in accordance with an applicable international convention on service of judicial documents; or

(3) if service cannot be made under paragraphs (1) or (2), and if reasonably calculated to give actual notice, by delivery of a copy of the summons and complaint, together with a translation of each into the official language of the foreign state —

(A) as directed by an authority of the foreign state or political subdivision in response to a letter rogatory or request or

(B) by any form of mail requiring a signed receipt, to be addressed and dispatched by the clerk of the court to the agency or instrumentality to be served, or

(C) as directed by order of the court consistent with the law of the place where service is to be made.

(c) Service shall be deemed to have been made —

(1) in the case of service under subsection (a)(4), as of the date of transmittal indicated in the certified copy of the diplomatic note; and

(2) in any other case under this section, as of the date of receipt indicated in the certification, signed and returned postal receipt, or other proof of service applicable to the method of service employed.

(d) In any action brought in a court of the United States or of a State, a foreign state, a political subdivision thereof,

or an agency or instrumentality of a foreign state shall serve an answer or other responsive pleading to the complaint within sixty days after service has been made under this section.

(e) No judgment by default shall be entered by a court of the United States or of a State against a foreign state, a political subdivision thereof, or an agency or instrumentality of a foreign state, unless the claimant establishes his claim or right to relief by evidence satisfactory to the court. A copy of any such default judgment shall be sent to the foreign state or political subdivision in the manner prescribed for service in this section.

§ 1609. Immunity from attachment and execution of property of a foreign state

Subject to existing international agreements to which the United States is a party at the time of enactment of this Act the property in the United States of a foreign state shall be immune from attachment arrest and execution except as provided in sections 1610 and 1611 of this chapter.

§ 1610. Exceptions to the immunity from attachment or execution

(a) The property in the United States of a foreign state, as defined in section 1603(a) of this chapter, used for a commercial activity in the United States, shall not be immune from attachment in aid of execution, or from execution, upon a judgment entered by a court of the United States or of a State after the effective date of this Act, if—

(1) the foreign state has waived its immunity from attachment in aid of execution or from execution either explicitly or by implication, notwithstanding any withdrawal of the waiver the foreign state may purport to effect except in accordance with the terms of the waiver, or

(2) the property is or was used for the commercial activity upon which the claim is based, or

(3) the execution relates to a judgment establishing rights in property which has been taken in violation of international law or which has been exchanged for property taken in violation of international law, or

(4) the execution relates to a judgment establishing rights in property —

(A) which is acquired by succession or gift, or

(B) which is immovable and situated in the United States: *Provided,* That such property is not used for purposes of maintaining a diplomatic or consular mission or the residence of the Chief of such mission, or

(5) the property consist of any contractual obligation or any proceeds from such a contractual obligation to indemnify or hold harmless the foreign state or its employees under a policy of automobile or other liability or casualty insurance covering the claim which merged into the judgment.

(b) In addition to subsection (a), any property in the United States of an agency or instrumentality of a foreign state engaged in commercial activity in the United States shall not be immune from attachment in aid of execution, or from execution, upon a judgment entered by a court of the United States or of a State after the effective date of this Act if —

(1) the agency or instrumentality has waived its immunity from attachment in aid of execution or from execution either explicitly or implicitly, notwithstanding any withdrawal of the waiver the agency or instrumentality may purport to effect except in accordance with the terms of the waiver, or

(2) the judgment relates to a claim for which the agency or instrumentality is not immune by virtue of

section 1605(a)(2), (3), or (5), or 1605(b) of this chapter, regardless of whether the property is or was used for the activity upon which the claim is based.

(c) No attachment or execution referred to in subsections (a) and (b) of this section shall be permitted until the court has ordered such attachment and execution after having determined that a reasonable period of time has elapsed following the entry of judgment and the giving of any notice required under section 1608(e) of this chapter.

(d) The property of a foreign state, as defined in section 1603(a) of this chapter, used for a commercial activity in the United States, shall not be immune from attachment prior to the entry of judgment in any action brought in a court of the United States or of a State, or prior to the elapse of the period of time provided in subsection (c) of this section, if —

(1) the foreign state has explicitly waived its immunity from attachment prior to judgment, notwithstanding any withdrawal of the waiver the foreign state may purport to effect except in accordance with the terms of the waiver, and

(2) the purpose of the attachment is to secure satisfaction of a judgment that has been or may ultimately be entered against the foreign state, and not to obtain jurisdiction.

§ 1611. Certain types of property immune from execution

(a) Notwithstanding the provisions of section 1610 of this chapter, the property of those organizations designated by the President as being entitled to enjoy the privileges, exemptions, and immunities provided by the International Organizations Immunities Act shall not be subject to attachment or any other judicial process impeding the disbursement of funds to, or on the order of, a foreign state

as the result of an action brought in the courts of the United States or of the States.

(b) Notwithstanding the provisions of section 1610 of this chapter, the property of a foreign state shall be immune from attachment and from execution, if —

(1) the property is that a foreign central bank or monetary authority held for its own account, unless such bank or authority, or its parent foreign government, has explicitly waived its immunity from attachment in aid of execution, or from execution, notwithstanding any withdrawal of the waiver which the bank, authority or government may purport to effect except in accordance with the terms of the waiver; or

(2) the property is, or is intended to be, used in connection with a military activity and

(A) is of a military character, or

(B) is under the control of a military authority or defense agency.

International Emergency Economic Powers Act, 50 U.S.C. §§ 1701 *et seq.*

§ 1701. Unusual and extraordinary threat; declaration of national emergency; exercise of Presidential authorities

(a) Any authority granted to the President by section 1702 of this title may be exercised to deal with any unusual and extraordinary threat, which has its source in whole or substantial part outside the United States, to the national security, foreign policy, or economy of the United States, if the President declares a national emergency with respect to such threat.

(b) The authorities granted to the President by section 1702 of this title may only be exercised to deal with an unusual and extraordinary threat with respect to which a national emergency has been declared for purposes of this chapter and may not be exercised for any other purpose. Any exercise of such authorities to deal with any new threat shall be based on a new declaration of national emergency which must be with respect to such threat.

§ 1702. Presidential authorities

(a)(1) At the times and to the extent specified in section 1701 of this title, the President may, under such regulations as he may prescribe, by means of instructions, licenses, or otherwise —

(A) investigate, regulate, or prohibit —

(i) any transactions in foreign exchange,

(ii) transfers of credit or payments between, by, through, or to any banking institution, to the extent that such transfers or payments involve any interest of any foreign country or a national thereof,

(iii) the importing or exporting of currency or securities; and

(B) investigate, regulate, direct and compel, nullify, void, prevent or prohibit, any acquisition, holding, withholding, use, transfer, withdrawal, transportation, importation or exportation of, or dealing in, or exercising any right, power, or privilege with respect to, or transactions involving, any property in which any foreign country or a national thereof has any interest;

by any person, or with respect to any property, subject to the jurisdiction of the United States.

(2) In exercising the authorities granted by paragraph (1), the President may require any person to keep a full record of, and to furnish under oath, in the form of reports or otherwise, complete information relative to any act or transaction referred to in paragraph (1) either before, during, or after the completion thereof, or relative to any interest in foreign property, or relative to any property in which any foreign country or any national thereof has or has had any interest, or as may be otherwise necessary to enforce the provisions of such paragraph. In any case in which a report by a person could be required under this paragraph, the President may require the production of any books of account, records, contracts, letters, memoranda, or other papers, in the custody or control of such person.

(3) Compliance with any regulation, instruction, or direction issued under this chapter shall to the extent thereof be a full acquittance and discharge for all purposes of the obligation of the person making the same. No person shall be held liable in any court for or with respect to anything done or omitted in good faith in connection with the administration of, or pursuant to and in reliance on, this chapter, or any regulation, instruction, or direction issued under this chapter.

(b) The authority granted to the President by this section does not include the authority to regulate or prohibit, directly or indirectly —

(1) any postal, telegraphic, telephonic, or other personal communication, which does not involve a transfer of anything of value; or

(2) donations, by persons subject to the jurisdiction of the United States, of articles, such as food, clothing, and medicine, intended to be used to relieve human suffering, except to the extent that the President determines that such donations (A) would seriously impair his ability to deal with any national emergency declared under section 1701 of this title, (B) are in response to coercion against the proposed recipient or donor, or (C) would endanger Armed Forces of the United States which are engaged in hostilities or are in a situation where imminent involvement in hostilities is clearly indicated by the circumstances.

§ 1703. Consultation and reports — Consultation with Congress

(a) The President, in every possible instance, shall consult with the Congress before exercising any of the authorities granted by this chapter and shall consult regularly with the Congress so long as such authorities are exercised.

Report to Congress upon exercise of Presidential authorities

(b) Whenever the President exercises any of the authorities granted by this chapter, he shall immediately transmit to the Congress a report specifying—

(1) the circumstances which necessitate such exercise of authority;

(2) why the President believes those circumstances constitute an unusual and extraordinary threat, which

has its source in whole or substantial part outside the United States, to the national security, foreign policy, or economy of the United States;

(3) the authorities to be exercised and the actions to be taken in the exercise of those authorities to deal with those circumstances;

(4) why the President believes such actions are necessary to deal with those circumstances; and

(5) any foreign countries with respect to which such actions are to be taken and why such actions are to be taken with respect to those countries.

Periodic follow-up reports

(c) At least once during each succeeding six-month period after transmitting a report pursuant to subsection (b) of this section with respect to an exercise of authorities under this chapter, the President shall report to the Congress with respect to the actions taken, since the last such report, in the exercise of such authorities, and with respect to any changes which have occurred concerning any information previously furnished pursuant to paragraphs (1) through (5) of subsection (b) of this section.

Supplemental requirements

(d) The requirements of this section are supplemental to those contained in Title IV of the National Emergencies Act.

§ 1704. Authority to issue regulations

The President may issue regulations, including regulations prescribing definitions, as may be necessary for the exercise of the authorities granted by this chapter.

§ 1705. Penalties

(a) A civil penalty of not to exceed $10,000 may be imposed on any person who violates any license, order, or regulation issued under this chapter.

(b) Whoever willfully violates any license, order, or regulation issued under this chapter shall, upon conviction, be fined not more than $50,000, or, if a natural person, may be imprisoned for not more than ten years, or both; and any officer, director, or agent of any corporation who knowingly participates in such violation may be punished by a like fine, imprisonment, or both.

§ 1706. Savings provisions — Termination of national emergencies pursuant to National Emergencies Act

(a)(1) Except as provided in subsection (b) of this section, notwithstanding the termination pursuant to the National Emergencies Act of a national emergency declared for purposes of this chapter, any authorities granted by this chapter, which are exercised on the date of such termination on the basis of such national emergency to prohibit transactions involving property in which a foreign country or national thereof has any interest, may continue to be so exercised to prohibit transactions involving that property if the President determines that the continuation of such prohibition with respect to that property is necessary on account of claims involving such country or its nationals.

(1) Notwithstanding the termination of the authorities described in section 1010(b) of this Act, any such authorities, which are exercised with respect to a country on the date of such termination to prohibit transactions involving any property in which such country or any national thereof has any interest, may continue to be exercised to prohibit transactions involving that property if the President deter-

mines that the continuation of such prohibition with respect to that property is necessary on account of claims involving such country or its nationals.

Congressional termination of national emergencies by concurrent resolution

(b) The authorities described in subsection (a)(1) of this section may not continue to be exercised under this section if the national emergency is terminated by the Congress by concurrent resolution pursuant to section 202 of the National Emergencies Act and if the congress specifies in such concurrent resolution that such authorities may not continue to be exercised under this section.

Supplemental savings provisions; supersedure of inconsistent provisions

(c)(1) The provisions of this section are supplemental to the savings provisions of paragraphs (1), (2), and (3) of section 101(a) and of paragraphs (A), (B), and (C) of section 202(a) of the National Emergencies Act.

(2) The provisions of this section supersede the termination provisions of section 101(a) and of title II of the National Emergencies Act to the extent that the provisions of this section are inconsistent with these provisions.

Periodic reports to Congress

(d) If the President uses the authority of this section to continue prohibitions on transactions involving foreign property interests, he shall report to the Congress every six months on the use of such authority.

3 U.S.C. §301.

§ 301 General authorization to delegate functions: publication of delegations

The President of the United States is authorized to designate and empower the head of any department or agency in the executive branch, or any official thereof who is required to be appointed by and with the advice and consent of the Senate, to perform without approval, ratification or other action by the President (1) any function which is vested in the President by law, or (2) any function which such officer is required or authorized by law to perform only with or subject to the approval, ratification, or other action of the President: *Provided*, That nothing contained herein shall relieve the President of his responsibility in office for the acts of any such head or other official designated by him to perform such functions. Such designation and authorization shall be in writing, shall be published in the Federal Register, shall be subject to such terms, conditions, and limitations as the President may deem advisable, and shall be revocable at any time by the President in whole or in part.

22 U.S.C. §1732.

§ 1732. Release of citizens imprisoned by foreign governments

Whenever it is made known to the President that any citizen of the United States has been unjustly deprived of his liberty by or under the authority of any foreign government, it shall be the duty of the President forthwith to demand of that government the reasons of such imprisonment; and if it appears to be wrongful and in violation of the rights of American citizenship, the President shall forthwith demand the release of such citizen, and if the release so demanded is unreasonably delayed or refused, the President shall use such means, not amounting to acts of war, as he may think necessary and proper to obtain or effectuate the release; and all the facts and proceedings relative thereto shall as soon as practicable be communicated by the President to Congress.

28 U.S.C. § 1254.

§ 1254. Courts of appeals; certiorari; appeal; certified questions

Cases in the courts of appeals may be reviewed by the Supreme Court by the following methods:

(1) By writ of certiorari granted upon the petition of any party to any civil or criminal case, before or after rendition of judgment or decree;

* * *

28 U.S.C. § 1330.

§ 1330. Actions against foreign states

(a) The district courts shall have original jurisdiction without regard to amount in controversy of any nonjury civil action against a foreign state as defined in section 1603(a) of this title as to any claim for relief in personam with respect to which the foreign state is not entitled to immunity either under sections 1605-1607 of this title or under any applicable international agreement.

(b) Personal jurisdiction over a foreign state shall exist as to every claim for relief over which the district courts have jurisdiction under subsection (a) where service has been made under section 1608 of this title.

(c) For purposes of subsection (b), an appearance by a foreign state does not confer personal jurisdiction with respect to any claim for relief not arising out of any transaction or occurrence enumerated in sections 1605-1607 of this title.

28 U.S.C. § 1331.

§ 1331. Federal question

The district courts shall have original jurisdiction of all civil actions arising under the constitution, laws, or treaties of the United States.

28 U.S.C. 1332.

§ 1332. Diversity of citizenship; amount in controversy; costs

(a) The district courts shall have original jurisdiction of all civil actions where the matter in controversy exceeds the sum or value of $10,000, exclusive of interest and costs, and is between —

(1) citizens of different States;

(2) citizens of a State and citizens or subjects of a foreign state;

(3) citizens of different States and in which citizens or subjects of a foreign state are additional parties; and

(4) a foreign state, defined in section 1603(a) of this title, as plaintiff and citizens of a State or of different States.

(b) Except when express provision therefor is otherwise made in a statute of the United States, where the plaintiff who files the case originally in the Federal courts is finally adjudged to be entitled to recover less than the sum or value of $10,000, computed without regard to any setoff or counterclaim to which the defendant may be adjudged to be entitled, and exclusive of interest and costs, the district court may deny costs to the plaintiff and, in addition, may impose costs on the plaintiff.

(c) For the purposes of this section and section 1441 of this title, a corporation shall be deemed a citizen of any State by which it has been incorporated and of the State where it has its principal place of business: *Provided, further* That in any direct action against the insurer of a policy or contract of liability insurance, whether incorporated or unincorporated, to which action the insured is not joined as a party-defendant, such insurer shall be deemed a citizen of the State of which the insured is a citizen, as well as of

any State by which the insurer has been incorporated and the State where it has its principal place of business.

(d) The word ''States'', as used in this section, includes the Territories, the District of Columbia, and the Commonwealth of Puerto Rico.

28 U.S.C. 1391.

§ 1391. Venue generally

(a) A civil action wherein jurisdiction is founded only on diversity of citizenship may, except as otherwise provided by law, be brought only in the judicial district where all plaintiffs or all defendants reside, or in which the claim arose.

(b) A civil action where jurisdiction is not founded solely on diversity of citizenship may be brought only in the judicial district where all defendants reside, or in which the claim arose, except as otherwise provided by law.

(c) A corporation may be sued in any judicial district in which it is incorporated or licensed to do business or is doing business, and such judicial district shall be regarded as the residence of such corporation for venue purposes.

(d) An alien may be sued in any district.

(e) A civil action which a defendant is an officer or employee of the United States or any agency thereof acting in his official capacity or under color of legal authority, or an agency of the United States, or the United States, may, except as otherwise provided by law, be brought in any judicial district in which (1) a defendant in the action resides, or (2) the cause of action arose, or (3) any real property involved in the action is situated, or (4) the plaintiff resides if no real property is involved in the action. Additional persons may be joined as parties to any such action in accordance with the Federal Rules of Civil Procedure and with such other venue requirements as would be applicable if the United States or one of its officers, employees, or agencies were not a party.

The summons and complaint in such an action shall be served as provided by the Federal Rules of Civil Procedure except that the delivery of the summons and complaint to

the officer or agency as required by the rules may be made by certified mail beyond the territorial limits of the district in which the action is brought.

(f) A civil action against a foreign state as defined in section 1603(a) of this title may be brought —

(1) in any judicial district in which a substantial part of the events or omissions giving rise to the claim occurred, or a substantial part of property that is the subject of the action is situated;

(2) in any judicial district in which the vessel or cargo of a foreign state is situated, if the claim is asserted under section 1605(b) of this title;

(3) in any judicial district in which the agency or instrumentality is licensed to do business or is doing business, if the action is brought against an agency or instrumentality of a foreign state as defined in section 1603(b) of this title; or

(4) in the United States District Court for the District of Columbia if the action is brought against a foreign state or political subdivision thereof.

28 U.S.C. § 1651.

§ 1651. Writs

(a) The Supreme Court and all courts established by Act of Congress may issue all writs necessary or appropriate in aid of their respective jurisdictions and agreeable to the usages and principles of law.

(b) An alternative writ or rule nisi may be issued by a justice or judge of a court which has jurisdiction.

28 U.S.C. §§ 2201-2202.

Chapter 151. — DECLARATORY JUDGMENTS

§ 2201. Creation of remedy

In a case of actual controversy within its jurisdiction, except with respect to Federal taxes other than actions brought under section 7428 of the Internal Revenue Code of 1954 or a proceeding under section 505 or 1146 of title 11, any court of the United States, upon the filing of an appropriate pleading, may declare the rights and other legal relations of any interested party seeking such declaration, whether or not further relief is or could be sought. Any such declaration shall have the force and effect of a final judgment or decree and shall be reviewable as such.

§ 2202. Further relief

Further necessary or proper relief based on a declaratory judgment or decree may be granted, after reasonable notice and hearing, against any adverse party whose rights have been determined by such judgment.

50 U.S.C. § 1631.

§ 1631. Declaration of national emergency by Executive order; authority; publication in Federal Register, transmittal to Congress

When the President declares a national emergency, no powers or authorities made available by statute for use in the event of an emergency shall be exercised unless and until the President specifies the provisions of law under which he proposes that he, or other officers will act. such specification may be made either in the declaration of a national emergency, or by one or more contemporaneous or subsequent Executive orders published in the Federal Register and transmitted to the Congress.

Federal Rules of Civil Procedure Rule 54.

Rule 54. Judgments; Costs

(a) Definition; Form. ''Judgment'' as used in these rules includes a decree and any order from which an appeal lies. A judgment shall not contain a recital of pleadings, the report of a master, or the record of prior proceedings.

(b) Judgment Upon Multiple Claims or Involving Multiple Parties. When more than one claim for relief is presented in an action, whether as a claim, counterclaim, cross-claim, or third-party claim, or when multiple parties are involved, the court may direct the entry of a final judgment as to one or more but fewer than all of the claims or parties only upon an express determination that there is no just reason for delay and upon an express direction for the entry of judgment. In the absence of such determination and direction, any order or other form of decision, however designated, which adjudicates fewer than all the claims or the rights and liabilities of fewer than all the parties shall not terminate the action as to any of the claims or parties, and the order or other form of decision is subject to revision at any time before the entry of judgment adjudicating all the claims and the rights and liabilities of all the parties.

(c) Demand for Judgment. A judgment by default shall not be different in kind from or exceed in amount that prayed for in the demand for judgment. Except as to a party against whom a judgment is entered by default, every final judgment shall grant the relief to which the party in whose favor it is rendered is entitled, even if the party has not demanded such relief in his pleadings.

(d) Costs. Except when express provision therefor is made either in a statute of the United States or in these rules, costs shall be allowed as of course to the prevailing party unless the court otherwise directs; but costs against

the United States, its officers, and agencies shall be imposed only to the extent permitted by law. Costs may be taxed by the clerk on one day's notice. On motion served within 5 days thereafter, the action of the clerk may be reviewed by the court.

Federal Rules of Civil Procedure, Rule 56.

Rule 56. Summary Judgment

(a) For Claimant. A party seeking to recover upon a claim, counterclaim, or cross-claim or to obtain a declaratory judgment may, at any time after the expiration of 20 days from the commencement of the action or after service of a motion for summary judgment by the adverse party, move with or without supporting affidavits for a summary judgment in his favor upon all or any part thereof.

(b) For Defending Party. A party against whom a claim, counterclaim, or cross-claim is asserted or a declaratory judgment is sought may, at any time, move with or without supporting affidavits for a summary judgment in his favor as to all or any part thereof.

(c) Motion and Proceedings Thereon. The motion shall be served at least 10 days before the time fixed for the hearing. The adverse party prior to the day of hearing may serve opposing affidavits. The judgment sought shall be rendered forthwith if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law. A summary judgment, interlocutory in character, may be rendered on the issue of liability alone although there is a genuine issue as to the amount of damages.

(d) Case Not Fully Adjudicated on Motion. If on motion under this rule judgment is not rendered upon the whole case or for all the relief asked and a trial is necessary, the court at the hearing of the motion, by examining the pleadings and the evidence before it and by interrogating counsel, shall if practicable ascertain what material facts exist without substantial controversy and what material facts are actually

and in good faith controverted. It shall thereupon make an order specifying the facts that appear without substantial controversy, including the extent to which the amount of damages or other relief is not in controversy, and directing such further proceedings in the actions as are just. Upon the trial of the action the facts so specified shall be deemed established, and the trial shall be conducted accordingly.

(e) Form of Affidavits; Further Testimony; Defense Required. Supporting and opposing affidavits shall be made on personal knowledge, shall set forth such facts as would be admissible in evidence, and shall show affirmatively that the affiant is competent to testify to the matters stated therein. Sworn or certified copies of all papers or parts thereof referred to in an affidavit shall be attached thereto or served therewith. The court may permit affidavits to be supplemented or opposed by depositions, answers to interrogatories, or further affidavits. When a motion for summary judgment is made and supported as provided in this rule, an adverse party may not rest upon the mere allegations or denials of his pleading, but his response, by affidavits or as otherwise provided in this rule, must set forth specific facts showing that there is a genuine issue for trial. If he does not so respond, summary judgment, if appropriate, shall be entered against him.

(f) When Affidavits are Unavailable. Should it appear from the affidavits of a party opposing the motion that he cannot for reasons stated present by affidavit facts essential to justify his opposition, the court may refuse the application for judgment or may order a continuance to permit affidavits to be obtained or depositions to be taken or discovery to be had or may make such other order as is just.

(g) Affidavits Made in Bad Faith. Should it appear to the satisfaction of the court at any time that any of the affidavits presented pursuant to this rule are presented in bad faith or

solely for the purpose of delay, the court shall forthwith order the party employing them to pay to the other party the amount of the reasonable expenses which the filing of the affidavits caused him to incur, including reasonable attorney's fees, and any offending party or attorney may be adjudged guilty of contempt.

Federal Rules of Civil Procedure Rule 64.

Rule 64. Seizure of Person or Property

At the commencement of and during the course of an action, all remedies providing for seizure of person or property for the purpose of securing satisfaction of the judgment ultimately to be entered in the action are available under the circumstances and in the manner provided by the law of the state in which the district court is held, existing at the time the remedy is sought, subject to the following qualifications: (1) any existing statute of the United States governs to the extent to which it is applicable; (2) the action in which any of the foregoing remedies is used shall be commenced and prosecuted or, if removed from a state court, shall be prosecuted after removal, pursuant to these rules. The remedies thus available include arrest, attachment, garnishment, replevin, sequestration, and other corresponding or equivalent remedies, however designated and regardless of whether by state procedure the remedy is ancillary to an action or must be obtained by an independent action.

Federal Rule of Civil Procedure Rule 69.

Rule 69. Execution.

(a) In General. Process to enforce a judgment for the payment of money shall be a writ of execution, unless the court directs otherwise. The procedure on execution, in proceedings supplementary to and in aid of a judgment, and in proceedings on and in aid of execution shall be in accordance with the practice and procedure of the state in which the district court is held, existing at the time the remedy is sought, except that any statute of the United States governs to the extent that it is applicable. In aid of the judgment or execution, the judgment creditor or his successor in interest when that interest appears of record, may obtain discovery from person, including the judgment

debtor, in the manner provided in these rules or in the manner provided by the practice of the state in which the district court is held.

(b) Against Certain Public Officers. When a judgment has been entered against a collector or other officer of revenue under the circumstances stated in Title 28; USC, § 2006, or against an officer of Congress in an action mentioned in the Act of March 3, 1875, c 130 § 8. (18 Stat 401), USC, Title 2, § 118, and when the court has given the certificate or probably cause for his act as provided in those statutes, execution shall not issue against the officer or his property but the final judgment shall be satisfied as provided in such statutes.

31 CFR Part 535 is amended as follows:

1. With an identical paragraph (c), §§ 535.213 and 535.214 are revised to read as follows:

§ 535.213 Direction involving property held by offices of banks in the United States in which Iran or an Iranian entity has an interest.

(a) Any branch or office of a bank, which branch or office is located within the United States and is, on the effective date of this section, either (1) in possession of funds or securities legally or beneficially owned by the Government of Iran or its agencies, instrumentalities or controlled entities, or (2) carrying on its books deposits standing to the credit of or beneficially owned by such government or its agencies, instrumentalities or controlled entities, is licensed, authorized, directed and compelled to transfer such funds, securities and deposits, held on January 19, 1981, including interest from November 14, 1979, at commercially reasonable rates, to the Federal Reserve Bank of New York, as fiscal agent of the U.S., to be held or transferred as directed by the Secretary of the Treasury.

(b) Transfers of funds, securities or deposits under paragraph (a) of this section shall be in accordance with the provisions of § 535.221 of this part.

(c) Any funds, securities or deposits subject to a valid attachment, injunction or other like proceeding or process not affected by § 535,218 need not be transferred as otherwise required by this section.

§ 535.214 Direction involving other financial assets in which Iran or an Iranian entity has an interest held by any person subject to the jurisdiction of the United States.

(a) Any person subject to the jurisdiction of the United States which is not a banking institution and is on January 19, 1981, in possession or control of funds or securities of

Iran or its agencies, instrumentalities or controlled entities is licensed, authorized, directed and compelled to transfer such funds or securities to the Federal Reserve Bank of New York, as fiscal agent of the U.S. to be held or transferred as directed by the Secretary of the Treasury. However, such funds and securities need not be transferred until any disputes (not relating to any attachment, injunction or similar order) as to the entitlement of Iran and its entities to them are resolved.

(b) Transfers of funds, securities or deposits under paragraph (a) of this section shall be in accordance with the provisions of § 535.221 of this part.

(c) Any funds, securities or deposits subject to a valid attachment, injunction or other like proceeding or process not affected by § 535.218 need not be transferred as otherwise required by this section.

2. Section 535.215 is amended by designating the existing paragraph as (a) and by adding paragraph (b) to read as follows:

§ 535.215 Direction involving other properties in which Iran or an Iranian entity has an interest held by any person subject to the jurisdiction of the United States.

* * * * *

(b) Any properties subject to a valid attachment, injunction or other like proceeding or process not affected by § 535.218 need not be transferred as otherwise required by this section.

3. Section 535.218 is amended by the revision of the section title and of paragraph (e) and the addition of new paragraphs (f) and (g) to read as follows:

§ 535.218 Prohibitions and nullifications with respect to property described in §§ 535.211, 535.212, 535.213, 535.214 and 535.215 and standby letters of credit.

* * * * *

(e) Paragraph (a) of this section does not revoke or withdraw specific licenses authorizing the operation of blocked accounts which were issued prior to January 19, 1981, and which do not relate to litigation. Such licenses shall be deemed to be revoked as of May 31, 1981, unless extended by general or specific license issued subsequent to February 26, 1981.

(f) The provisions of paragraphs (a), (b) and (c) of this section shall apply to contested and contingent liabilities and property interests of the Government of Iran, its agencies, instrumentalities or controlled entities, including debts.

(g) All existing attachments on standby letters of credit, performance bonds and similar obligations and on substitute blocked accounts established under § 535.568 relating to standby letters of credit, performance bonds and similar obligations are nullified and all future attachments on them are hereafter prohibited. All rights, powers and privileges relating to such attachments are nullified and all persons hereafter are barred from asserting or exercising any rights, powers or privileges derived therefrom.

4. Section 535.504 is amended by relettering existing paragraph (c) as (d); and by adding new paragraphs (c) and (e) to read as follows:

§ 535.504 Certain judicial proceedings with respect to property of Iran or Iranian entities.

* * * * *

(c) For purposes of this section, contested and contingent liabilities and property interests of the Government of

Iran, its agencies, instrumentalities, or controlled entities, including debts, shall be deemed to be subject to § 535.215.

* * * * *

(e) Judicial proceedings to obtain attachments on standby letters of credit, performance bonds or similar obligations and on substitute blocked accounts established under § 535.568 relating to standby letters of credit, performance bonds and similar obligations are not authorized or licensed.

5. Amendment No. 25 of the amendments to the Regulations published at 46 FR 14337 on February 26, 1981, is corrected by deleting § 535.332 in the list of revoked sections. There has never been a § 535.332.

Dated: May 8, 1981.

Dennis M. O'Connell,

Director:

Approved:

John P. Simpson,

Acting Assistant Secretary, Enforcement and Operations.

[FR Doc. 81-14509 Filed 5-11-81; 3:40 pm]
BILLING CODE 4810-25-M

For Immediate Release

Treasury Amends Regulations to Require Transfer of Iranian Bank Deposits

Thursday, June 4, 1981

The Department of the Treasury announced today that it has delivered to the *Federal Register* for publication amendments to the Iranian Assets Control Regulations requiring the transfer of bank deposits and certain other financial assets of Iran in the United States to the Federal Reserve Bank of New York by noon, June 19. The amendments will facilitate implementation of the Iran-U.S. agreements of January 19, 1981, which call for the transfer of the deposits abroad by July 19. According to the agreements, half of the deposits (up to $1 billion) are to be set aside in a Security Account to pay awards against Iran by the Iran-U.S. Claims Tribunal to U.S. claimants. The balance will go to Iran.

Treasury estimates the principal amount of the bank deposits to be about $2.08 billion. Although the exact amount of interest will not be known until the transfers are made, Treasury believes that the amount of interest should exceed $250 million.

The Treasury announcement follows major decisions in the Federal Courts of Appeal in two circuits upholding the President's power to nullify attachments on the Iranian assets and to order their transfer. In Regulations issued February 26, 1981, Treasury stated that it would not seek to enforce the transfer requirement (through the application of civil and criminal sanctions) until there had been a definitive legal ruling upholding the President's authority. Today's action removes this protection from enforcement action from the Regulations. Holders of assets to be transferred are obligated under the new amendments to take all action they believe necessary to effect the required transfers.

The June 19 date is a firm one under the present circumstances. However, it should also be emphasized that if the Supreme Court accepts for review and sets for argument on an expedited basis an appropriate case which properly presents the legal issues surrounding the transfer of these assets, the holders of these assets can be assured that the enforcement policy would be adjusted accordingly. We believe that the case for which Supreme Court review has already been sought, *Electronic Data Systems Corp. v. Social Security Organization of the Government of Iran*, is not such an appropriate case.

Both the present Attorney General and his predecessor had given opinions that the President's Executive Orders, upon which the Treasury transfer requirements are based, are lawful.

Department of the Treasury

Office of Foreign Assets Control
31 CFR Part 535

Iranian Assets Control Regulations:
Transfer of Financial Assets
to Federal Reserve Bank of New York

AGENCY: Office of Foreign Assets Control.
ACTION: Final Rule.

SUMMARY: The Office of foreign Assets control is amending the Iranian Assets Control Regulations. The purposes of the amendments are: (1) to direct banks and other persons holding Iranian financial assets to transfer them to the Federal Reserve Bank of New York on or before noon, E.D.T., June 19, 1981; (2) to revoke the policy of not seeking to impose criminal and civil sanctions on holders of Iranian property who do not comply with the transfer requirements of the Iranian Assets Control Regulations; (3) to provide additional guidance on the meaning of the term "commercially reasonable" rates of interest; (4) to make clear that no transfer requirement under section 535.213 or 535.214 shall be deemed to authorize or compel any payment or transfer of any obligation under a standby letter of credit, performance bond, or similar obligation as to which a blocked account has been established pursuant to section 535.568 or as to which payment is prohibited under an injunction obtained by the account party; and (5) to require that persons making the required transfers of financial assets of Iran to the Federal Reserve Bank of New York promptly report on those transfers to the Office of Foreign Assets Control.

The amendments are needed to facilitate the ongoing implementation of the Iran-U.S. agreements of January 19, 1981, providing for the release of the hostages detained in

Iran and the transfer of Iranian property blocked by the United States.

In a recent decision, *Chas. T. Main International, Inc. v. Khuzestan Water & Power Authority*, No. 80-1027 (1st Cir., May 22, 1981), the United States Court of Appeals for the First circuit held that the President has authority to order the transfer of blocked Iranian assets without regard to attachments or other judicial orders obtained subsequent to the November 14, 1979, blocking order, and that he has the authority to settle claims of U.S. parties against Iranian entities by providing for their submission to binding arbitration.

Similarly, the United States Court of Appeals for the District of Columbia Circuit, in *American International Group v. Islamic Republic of Iran*, No. 80-1779 (D.C. Cir., May 22, 1981), reviewed the Executive Orders nullifying attachments and suspending claims in implementation of the January 19, 1981, agreements, and rendered a judgment that the suspension of claims "is a lawful exercise of the President's power to arrange for the settlement of claims of American nationals against the governments of foreign states," and directed that attachments and other provisional remedies be vacated. These decisions confirm the legal judgments reached by the present Attorney General of the United States, and his predecessor, upholding the President's authority to order the prompt transfer of property in which Iran has an interest. Further, they provide the basis for revocation of the policy established by the prior regulations against the seeking of civil and criminal sanctions against persons who hold or control Iranian property required to be transferred.

Section 203(a)(3) of the International Emergency Economic Powers Act (50 USC 1702(a)(3)), Section 1-103 of Executive Order 12279, Section 1-103 of Executive Order

12280, Section 1-103 of Executive Order 12281 and Section 535.219 of the Iranian Assets Control Regulations provide that compliance with the transfer directives of the Iranian Assets Control Regulations shall, to the extent thereof, be a full acquittance and discharge for all purposes of the obligations of the person so complying and further provide that no person shall be liable in any United States court for anything done or omitted in good faith compliance therewith.

EFFECTIVE DATE: June 4, 1981.

FOR FURTHER INFORMATION CONTACT: Raymond W. Konan, Chief Counsel, Office of Foreign Assets Control, Department of the Treasury, Washington, D.C. 20220, Tel. (202) 376-0236.

SUPPLEMENTARY INFORMATION: Since the Regulations involve a foreign affairs function, the provisions of the Administrative Procedure Act, 5 U.S.C. 553, requiring notice of proposed rulemaking, opportunity for public participation and delay in effective date are inapplicable.

31 CFR Part 535 is amended as follows:

1. Section 535.213 is amended by the revocation and removal of paragraph (b), by adding a new paragraph (b) in its place, and by adding paragraph (d) as follows:

* * *

(b) Transfers of funds, securities or deposits under paragraph (a) of this section shall be in accordance with the provisions of section 535.221 of this part, and such funds, securities or deposits, plus interest at commercially reasonable rates from November 14, 1979, to the transfer date, shall be received by the Federal Reserve Bank of New York on or before noon, E.D.T., June 19, 1981. For periods for which rates are to be determined in the future, whether by agreement between Iran and the bank or otherwise (see

section 535.440), interest for such periods shall be transferred to the Federal Reserve Bank of New York promptly upon such determination. Persons in possession or control of property required to be transferred by this section shall take all actions they believe necessary to effect the required transfers.

* * *

(d) The transfers of securities required by this section shall be made notwithstanding section 535.202.

2. Section 535.214 is amended by the revocation and removal of paragraph (b), by adding a new paragraph (b) in its place, and by adding paragraph (d) as follows:

* * *

(b) Transfers of funds and securities under paragraph (a) of this section shall be in accordance with the provisions of section 535.221 of this part, and such funds and securities shall be received by the Federal Reserve Bank of New York on or before noon, E.D.T., June 19, 1981. Persons in possession or control of property required to be transferred by this section shall take all actions they believe necessary to effect the required transfers.

* * *

(d) The transfers of securities required by this section shall be made notwithstanding section 535.202.

3. Section 535.221 is amended by the revocation and removal of paragraphs (a), (b) and (f), by the revision and paragraphs (c) and (d) and by the relettering of paragraphs. As amended, section 535.221 reads as follows:

Section 535.221 *Compliance with directive provisions.*

(a) Transfers of deposits or funds required by sections 535.213 and 535.214 of this part shall be effected by means of wire transfer to the Federal Reserve Bank of New York

for credit to the following accounts: with respect to transfers required by section 535.213, to the Federal Reserve Bank of New York, as fiscal agent of the United States, Special Deposit Account A, and with respect to transfers required by section 535.214, to the Federal Reserve Bank of New York, as fiscal agent of the United States, Special Deposit Account B.

(b) Securities to be transferred as required by sections 535.213 and 535.214 of this part that are not presently registered in the name of Iran or an Iranian entity shall be delivered to the Federal Reserve Bank of New York in fully transferable form (bearer or endorsed in blank), accompanied by all necessary transfer documentation, *e.g.*, stock or bond powers or powers of attorney. All securities transferred, including those presently registered in the name of Iran or an Iranian entity, shall be accompanied by instructions to deposit such securities to the following accounts: with respect to transfers required by section 535.213, to the Federal Reserve Bank of New York, as fiscal agent of the United States, Special Custody Account A, and with respect to transfers required by section 535.214, to the Federal Reserve Bank of New York, as fiscal agent of the United States, Special Custody Account B.

(1) Securities which are in book-entry form shall be transferred by wire transfer to the Federal Reserve Bank of New York to the appropriate account named in this paragraph.

(2) Definitive securities which are in bearer or registered form shall be hand delivered or forwarded by registered mail, insured, to the Federal Reserve Bank of New York, Safekeeping Department, to the appropriate account named in this paragraph.

(c) If a security in which Iran or an Iranian entity has an interest is evidenced by a depositary receipt or other evi-

dence of a security, the legal owner of such security shall arrange to have the security placed in fully transferable form (bearer or endorced in blank) as provided in paragraph (b) of this section, and transferred pursuant to paragraph (b)(2) of this section.

(d) Any person delivering a security or securities to the Federal Reserve Bank of New York under paragraph (b) shall provide the Bank at least two business days prior written notice of such delivery, specifically identifying the sending person, the face or par amount and type of security, and whether the security is in bearer, registered or book-entry form.

4. Section 535.337 is amended to read as follows:

Section 535.337 *Funds.*

For purposes of this part, the term ''funds'' shall mean monies in trust, escrow accounts and similar special funds, money market funds, cash balances held by a broker/dealer, currency and coins. It does not include accounts created under section 535.568.

5. Section 535.438 is amended by redesignating the existing text as paragraph (a) and by adding a new paragraph (b) as follows:

* * *

(b) No transfer requirement under section 535.213 or 535.214 shall be deemed to authorize or compel any payment or transfer of any obligation under a standby letter of credit, performance bond or similar obligation as to which a blocked account has been established pursuant to section 535.568 or as to which payment is prohibited under an injunction obtained by the account party.

6. Section 535.440 is amended to read as follows:

Section 535.440 *Commercially reasonable interest rates.*

For purposes of section 535.212 and 535.213, what is meant by ''commercially reasonable rates'' depends on the particular circumstances. In the case of time or savings deposits, the ''commercially reasonable rate'' is that rate provided for by the deposit agreement or applicable law. With respect to other obligations where the rate remains to be determined, it is presently expected that the ''commercially reasonable rate'' will be the rate agreed upon by the bank and Iran. However, where a deposit has in fact operated as a demand account under Treasury license, it would be appropriate to treat the deposit for purposes of sections 535.212 and 535.213 as a non-interest-bearing account.

7. New section 535.620 is added as follows:

Section 535.620 *Report of Transfer of domestic bank assets and financial assets held by nonbanking institutions.*

(a) *Requirement for reports.* A report shall be filed on Form TFR-620 by any bank or nonbanking institution regarding any transfer to the Federal Reserve Bank of New York under sections 535.213 and 535.214 within 5 business days of such transfer.

(b) *Contents of report.* Each report shall contain the following information:

(1) Name and address of the transferor (indicate whether bank or nonbanking institution).

(2) Name and telephone number of person to be contacted about the transfer.

(3) Description of the property transferred with a list of accounts transferred, including account party, account number, and account amount, with breakdown between principal and interest.

(4) Total value (market value in the case of securities) of each transfer.

(5) Date and time of transfer.

(6) A statement as to how interest was calculated, including rate(s) of interest and period(s) for which the rate(s) was applied.

(c) *Filing.* Reports shall be prepared in triplicate. Two copies shall be sent in a set to Unit 620, Office of Foreign Assets Control, Department of the Treasury, Washington, D.C. 20220. The third copy shall be retained for the reporter's records.

(d) *Confidentiality of reports.* Reports under this section are regarded as privileged and confidential but may be disclosed to Iran.

(Sec. 201-207, 91 Stat. 1626, 50 U.S.C. 1701-1706; E.O. No. 12170, 44 FR 65729; E.O. No. 12205, 45 FR 24099; E.O. No. 12211, 45 FR 26605; E.O. No. 12276, 46 FR 7913· E.O. No. 12279, 46 FR 7919; E.O. No. 12280, 46 FR 7921; E.O. No. 12281, 46 FR 7923; E.O. No. 12282, 46 FR 7925; and E.O. No. 12294, 46 FR 14111.)

Dated: June 4, 1981

Dennis M. O'Connell
Director

Approved: John P. Simpson
Acting Assistant Secretary,
Enforcement and Operations

Memorandum.

United States District Court, Central District of California.

Dames & Moore, a partnership, Plaintiff, v. Donald T. Regan, the Secretary of the Treasury of the United States of America, and the United States of America, Defendants. No. CV 81-2064-LEW (Px).

Daniel, Mann, Johnson & Mendenhall, a California corporation, Plaintiff, v. Donald T. Regan, the Secretary of the Treasury of the United States of America, and the United States of America, Defendants. No. CV 81-1101-LEW (Px).

Filed: June 8, 1981.

The Court's Order filed May 28, 1981, entered June 2, 1981, to the extent that it related to CV 81-2064-LEW (Px), was made on the basis of the arguments presented by the Government in the Motion to Dismiss Dames & Moore's Complaint for Failure to State a Claim upon which Relief may be Granted and in the Government's Memorandum in Support of Defendant's Motion to Dismiss and in Opposition to Dames & Moore's Brief as Amicus Curiae.

Dated: June 8, 1981.

/s/ Laughlin E. Waters,
Laughlin E. Waters
United States District Judge

Docket Fee Payment Notification Form.

United States Court of Appeals for the Ninth Circuit.

I.

Short Case Title: *Dames & Moore vs. Donald T. Regan, et al.* U.S. Court of Appeals Docket Number (if assigned) 81-5450, June, 4 1981. U.S. District Court Central. U.S. District Court Docket Number CV 81-2064 (LEW).

II.

Date Notice of Appeal Received/Lodged/Filed (please circle one) 6/3/81.

III.

A. Date U.S. Court of Appeals Docket Fee Paid 6/3/81, Amount $70.00.

IV.

Form Completed in the U.S. District Court by:

/s/ A.M.
A. Miyagishma
Deputy Clerk.

Notice of Appeal.

United States District Court, Central District of California.

Dames & Moore, Plaintiff, v. Donald T. Regan, the Secretary of the Treasury of the United States of America, and the United States of America, Defendants. Case No. CV 81-2064 LEW (Px).

To Donald T. Regan and the United States of America and Their Attorneys of Record Herein:

Please Take Notice that Plaintiff Dames & Moore (''Plaintiff'') hereby appeals to the United States Court of Appeals for the Ninth Circuit from the Judgment entered on June 2, 1981, which denied Plaintiff's motion for a preliminary injunction and dismissed Plaintiff's complaint for failure to state a claim upon which relief may be granted.

Pursuant to Rule 33 of the Local Rules of the Central District of California, the names of all the parties to the judgment and the names and addresses of their respective attorneys are:

Party: Dames & Moore. *Attorneys*: Tuttle & Taylor Incorporated, 609 South Grand Avenue, Los Angeles, California 90017.

Party: Donald T. Regan and the United States of America. *Attorneys*: Dzintra I. Janavs, Esq., Assistant United States Attorney,1100 United States Courthouse, 312 North Spring

Street, Los Angeles, California 90012. William Black, Esq., Department of Justice-Civil Division, Room 3338, 9th & Pacific Avenue, N.W., Washington, D.C. 20530.

Dated: June 3, 1981.

TUTTLE & TAYLOR Incorporated
MERLIN W. CALL
C. STEPHEN HOWARD
WILLIAM C. SCHWEINFURTH
JEFFREY M. HAMERLING

/s/ Jeffrey M. Hamerling
Jeffrey M. Hammerling, a member of the law firm of TUTTLE & TAYLOR Incorporated, Attorneys for Plaintiff Dames & Moore

Declaration of Service.

State of California, County of Los Angeles.

I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action; my business address is 609 South Grand Avenue, Los Angeles, California 90017.

On June 3, 1981, I served the foregoing document described as NOTICE OF APPEAL on the parties in this action by sending a true copy by *Express Mail* thereof enclosed in a sealed envelope with postage thereon fully prepaid addressed as follows:

William Black, Esq.
Department of Justice-Civil Division
Room 3338
9th & Pacific Avenue, N.W.
Washington, D.C. 20530

and by causing a true copy thereof to be delivered to the offices of:

Dzintra I. Janavs, Esq.
Assistant United States Attorney
1100 United States Courthouse
312 North Spring Street
Los Angeles, California 90012

Michael D. Koomer, Esq.
Pacht, Ross, Warne, Bernhard & Sears,
Inc.
Suite 500
1800 Avenue of the Stars
Los Angeles, California 90067

Gerald M. Singer, Esq.
10100 Santa Monica Boulevard
26th Floor
Los Angeles, California 90067

Executed on June 3, 1981, at Los Angeles, California.

I declare under penalty of perjury that the foregoing is true and correct.

/s/ Delilah A. Phiefer
Delilah A. Phiefer

Order.

United States District Court, Central District of California.

Dames & Moore, a partnership, Plaintiff, v. Donald T. Regan, the Secretary of the Treasury of the United States of America, and the United States of America, Defendants. No. CV 81-2064-LEW (Px).

Daniel, Mann, Johnson & Mendenhall, a California corporation, Plaintiff, v. Donald T. Regan, the Secretary of the Treasury of the United States of America, and the United States of America, Defendants. No CV 81-1101-LEW (Px).

Filed: June 8, 1981.

During the pendency of the appeal in CV 81-2064-LEW (Px) defendants are restrained from transferring, or requiring any other person to transfer, from their present locations, any property or assets of the Government of Iran, or any of its agencies, instrumentalities, controlled entities or per-

sons, or affiliates, which is subject to any writ of attachment, garnishment, judgment, levy, or other judicial lien, issued by this Court or any other Court, in favor of Dames & Moore.

Dated: June 8, 1981.

/s/ Laughlin E. Waters
Laughlin E. Waters
United States District Judge

Presented by:

TUTTLE & TAYLOR Incorporated
MERLIN W. CALL
C. STEPHEN HOWARD
WILLIAM C. SCHWEINFURTH
JEFFREY M. HAMERLING
/s/ C. Stephen Howard
C. Stephen Howard, a member of
the law firm of Tuttle & Taylor
Incorporated, Attorneys for
Plaintiff Dames & Moore